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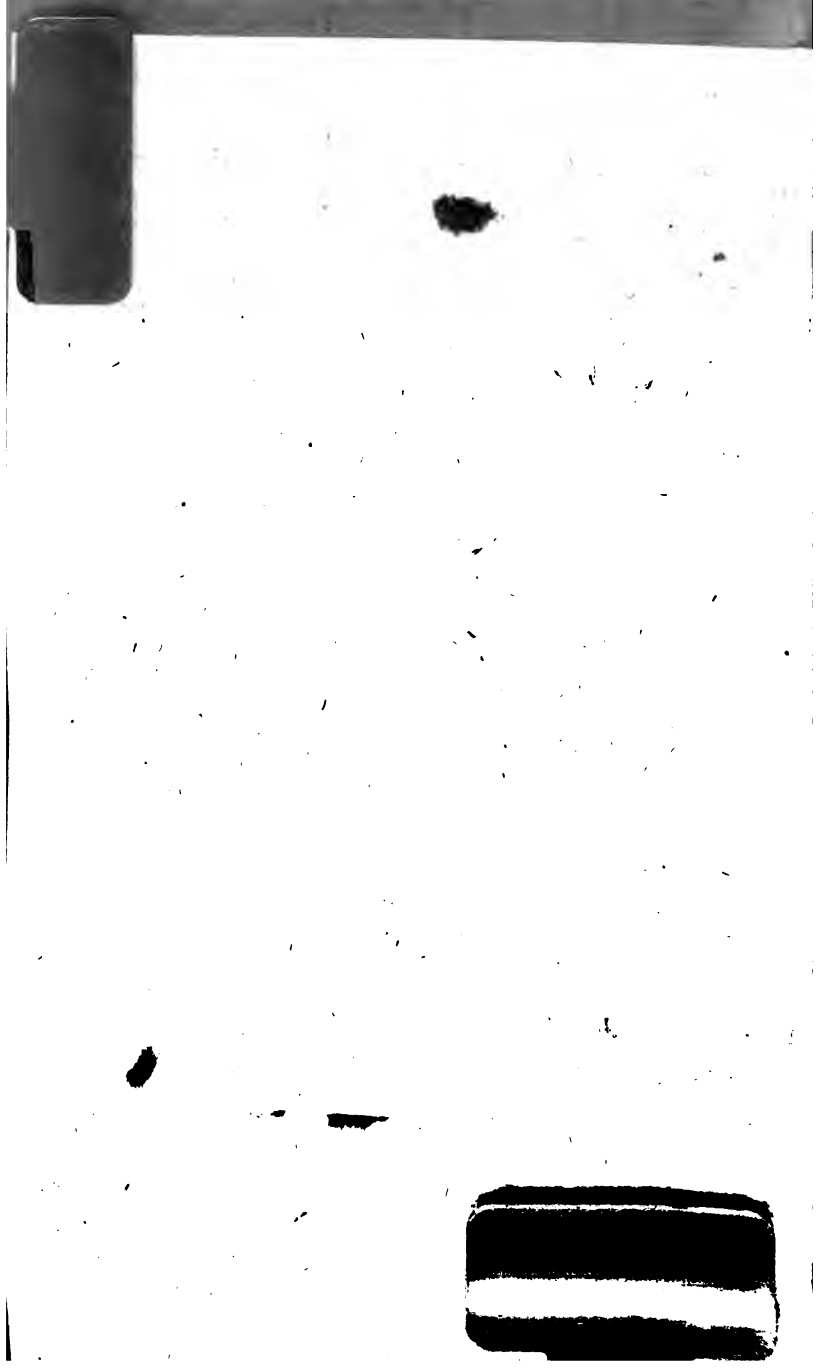

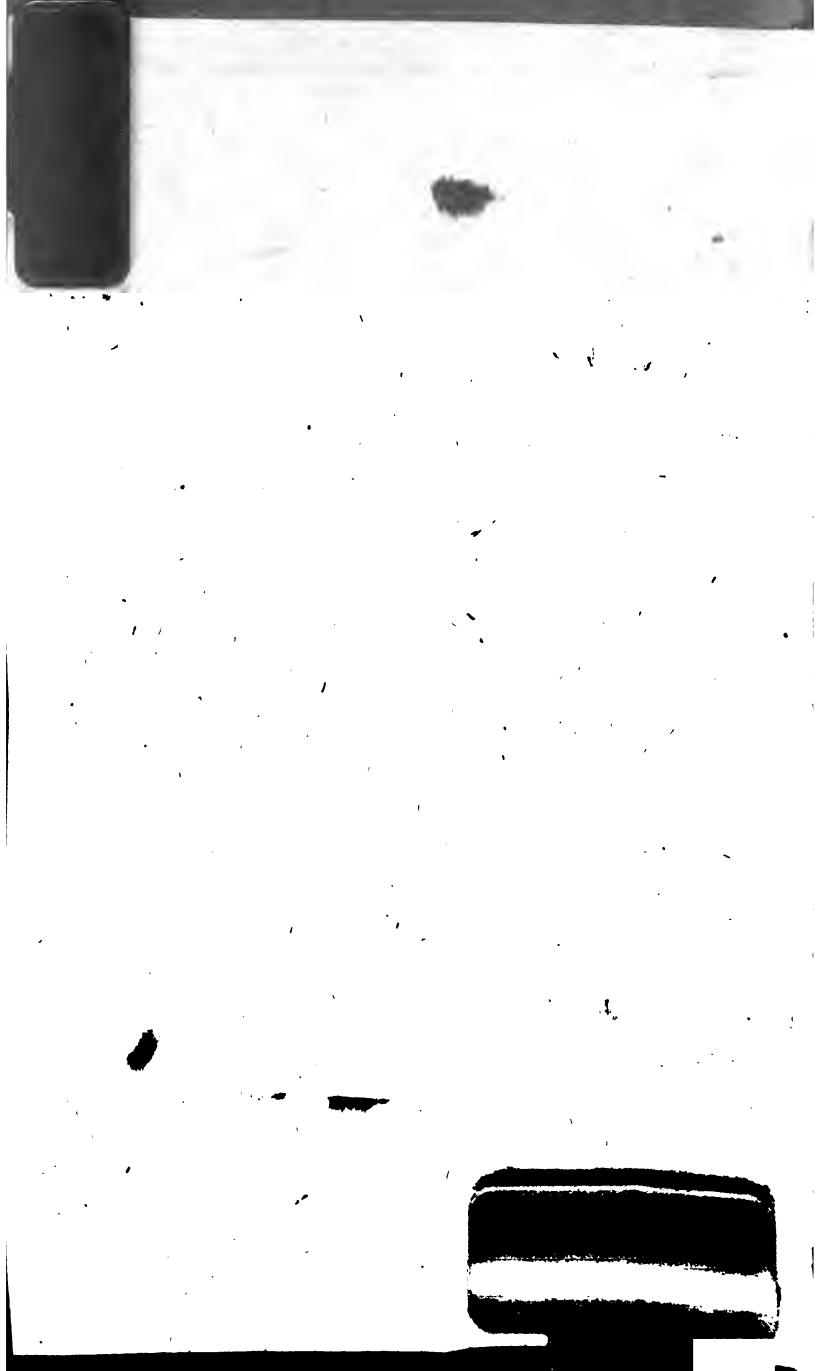

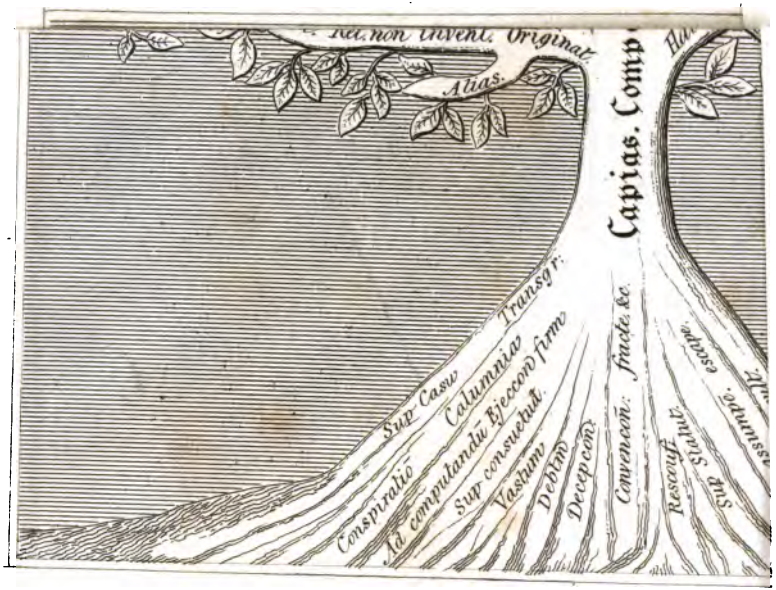

THE NOMODENDRON; or, LA

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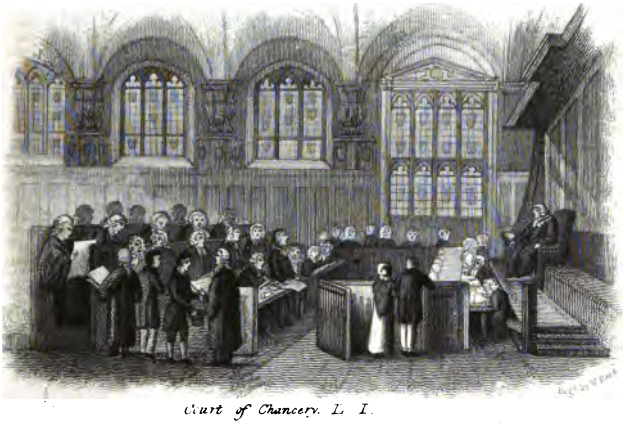
PROFESSIONAL RELICS

AND

ANECDOTES

OF THE BAR, BENCH, AND WOOLSACK.

VOL II.



Court of Chancery. L. I.

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LAW AND LAWYERS.

THE STUDENT AT LAW OF FORMER DAYS.

When we read in Fortescue, that in his time (the reign of Henry VI.) there were nearly two thousand students at the Inns of Court and Chancery, we are apt to imagine that the profession must have been, at that period, most grievously *overstocked.* But this is a mistake. The Inns of Court at that time were in fact an university, to which the sons of our nobility and gentry were sent to finish their education, from Oxford or from Cambridge; our ancestors conceiving that an acquaintance with the laws of their country, was a necessary accomplishment for their sons. Thus we are expressly told by Fortescue, that "for the endowment of virtue, and abandoning of vice, Knights and Barons, with other states and noblemen of the realm, place their children in these Inns, though they desire not to have them learned in the laws, nor to live by the practice thereof,

but only upon their father's allowance."—(*De laudibus, &c. c.* 50.) So Fuller, in his character of "The true Gentleman," and "The Degenerous Gentleman," (*Holy and Profane State, p.* 151 and 411,) makes a residence at the Inns of Court follow that at the university as an essential part of a young gentleman's education, although he do not adopt the law as his profession. Not only, therefore, have the manners and habits of the students at law varied with the changing manners and habits of society, but also with the change in the objects of their residence at the Inns of Court. Few young gentlemen now frequent those learned purlieus without the intention of becoming actively engaged in the profession, and making it the source of emolument, if not of subsistence. The student of the present day is, therefore, a very different creature from the student of the sixteenth or even the seventeenth century; and it will not be unentertaining to sketch the portrait of the latter, such as we may suppose him to have existed about the commencement of the seventeenth century.

The young gentleman, as early sometimes as the age of fourteen or fifteen,* was sent by his friends to finish his education in the metropolis. If his connexions were noble or affluent, he was fur-

* See Sir Thomas Elyott's Governor, p. 45.

nished with an ample exhibition;* provided with a servant and a horse,† and suffered for the most part to pursue the course to which his fancy led him. Idle habits were soon contracted, and ennui frequently drove the young gentleman to seek relief at the gaming table,‡ or in other vicious pastimes. He became a most profane swearer,§ and enrolled himself in the ranks of the *roaring boys*, or roysters,‖ and sometimes created a disgraceful

---

* *Fortescue de Laud. c.* 50. In Fortescue's time, "no student could be maintained for less expenses, by the year, than 20 marks," (13*l.* 6*s.* 8*d.*) Lord Keeper North had an exhibition of 60*l.* per annum.—*Life of North, v.* i. *p.* 49. Jefferies's allowance was only 40*l.* a year, and 10*l.* for clothing.—*Lives of the Chancellors, v.* i. *p.* 179. Sir T. More had so scanty an allowance, "ut nec ad reficiendos calceos, nisi a patre peteret, pecuniam haberet."—*Erasmi Epist.*

† Roger North's Discourse, p. 4.

‡ Elyott's Governor, p. 46.

§ "What formerly was counted the chief credit of an orator, these esteem the honour of a swearer, *pronunciation*, to mouth an oath with a graceless grace. These (as David saith) cloath themselves with curses as with a garment, and therefore desire to be in the latest fashion, both in their cloathes and curses."—*Fuller's Degenerous Gentleman.* (*The profane State, p.* 412.)

‖ "Here he grows acquainted with the *roaring boys*, I am afraid so called by a woful *prolepsis* here for hereafter." (*Fuller, p.* 412.) These *roaring boys* or *roysters*, for they were distinguished by various cant names, were bands of

brawl, even within the hall of his own Inn.* He was, in the phrase of the day, a swinge-buckler, and knew where the Bona-robas were; yea, had the best of them at his commandment,† and the feats that he did about Turnbull Street, in his youth, furnished a theme for his old age.‡ He was ever playing at cards in the Hall, Buttery, or Butler's Chamber;§ would make rude noises in the Hall at exercises, keep his hat on at readings or moots, and stand with his back to the fire.‖

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disorderly persons, who paraded the streets of the metropolis at night, to the terror of the peaceable citizens. (*See Miss Aikin's James I. v.* i. *p.* 230.) In later times they were known by the name of *Mohocks*..—(*See the Spectator.*) Mr. Justice Burnet, when a student, is said to have been one of this disorderly gang.¶ (*See Ante, v.* i. *p.* 261.) "Mr. Hale, with some other students, being invited to be merry out of town, one of the company called for so much wine, that notwithstanding all that Mr. Hale could do to prevent it, he went on in his excess till he fell down as dead before them."—*Life of Hale, p.* 7.

* Sir John Davies, when a student, "interrupted the quiet of the Inn by misdemeanours, for which he was fined, and by disorders, for which he was removed from Commons." He is said to have bastinadoed Richard Martin, afterwards recorder of London, while at dinner in the Middle Temple hall, for which he was expelled. *See Biog. Brit. vol.* iv.

† *Second Part of Henry IV. Act* 3. *Scene* 2.

‡ *Ibid.* § *Dugdale, p.* 286.

‖ See the Orders against these offences, *Dugdale, p.* 291.

In his dress he was always topping the mode; wore his beard above three days' growth,* and dressed himself in a white doublet and hose, though under pain of expulsion.† Nay, setting at nought the orders of his house, he would appear at church with a cloak, sword, and dagger.‡

He did not, like Socrates, account dancing among the serious disciplines; for his especial delight was in Bargenettes, Turgions, rounds, and other base dances,§ little esteeming the solemn post-revels of his society.

Not knowing by his study so much as what an execution meant, till he learned it by his own dear experience, he wasted all his means in his dissolute living. Through the mediation of a scrivener in his Inn, he grew acquainted with some great Usurer, who, though long dormant, at last ramped for his money. To satisfy him, his last manor was sold; and his death was as miserable as his life had been vicious. Within two generations his name was quite forgotten, except some Herald, in his visitation, passed by and chanced to spell his broken arms in a church-window. Such was the end of this "degenerous gentleman."‖

But the young gentleman whose narrow income

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* *Dugdale*, p. 148. † *Ibid*, p. 281.
‡ *Ibid*, 323. § *Sir T. Elyott's Governor*, p. 68.
‖ *Fuller's profane State*, p. 415.

compelled him to apply himself diligently to study,* lived a far different life. No expensive pastimes helped to wile away his time; the doors of the Globe and of the Red Bull were shut against him. In some obscure apartment, some moiety of a petit chamber,† which he seldom quitted, (being a great believer in the old adage, *Keep your shop and your shop will keep you,*)‡ he applied himself diligently to his laborious task. Being first admitted a member of one of the Inns of Chancery, he was a constant attendant on all the mootings, and having thus grown to ripeness,§ he was in due time admitted a member of one of the greater Inns of Court. He now pursued his studies with still greater application. His grand project was to master the Year-Books, of which he was sure to dispatch the greatest part;‖ and

* "There be some also, which by their friends, be coarcted to apply to the study of the law only, and for lack of plenteous exhibition, be let of their liberty, wherefore they cannot resort unto pastime." *Elyott's Governor, p.* 46.

† Jefferies "removed without the advantages of a classical education, to the Inner Temple, where he became a very assiduous student of the municipal laws of England, though in an obscure and mean apartment." *Lives of the Chancellors, v.* i. *p.* 179.

‡ *Life of North, v.* i. *p.* 15.

§ *Fortescue de Laudibus, c.* 50. *Life of North, v.* i. *p.* 31.

‖ *Life of North, v.* i. *p.* 27.

to these he added the other old reporters, for he thought that a lawyer could not be well grounded without a knowledge of these sages of the law. With these he intermixed a portion of *institutionary* reading, and after a fulness of the reports in a morning, about noon would take a repast in Staunford, Crompton, or the Lord Coke's Pleas of the Crown and Jurisdiction of Courts, Manwood on the Forest Law, or Fitzherbert's Natura Brevium,* or occasionally, by way of relaxation, he would turn over the pages of some antiquarian volume, as Britton or Bracton, Fleta or Fortescue, Hengham or the Old Tenures, the Narrationes Novæ, the Old Natura Brevium, or the Diversity of Courts.† He made a copious common-place book, to which he could easily turn for the name and place of a case, for he did not endeavour (like old Sergeant Waller, who was called *Index*) to carry both in his head.‡ Not conceiving that the Lord Coke had allowed a sufficient portion of the day for study,§ and persuaded that if he should follow the advice of Sir Heneage

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* *Life of North v.* i. *p.* 24. † *Ibid.*

‡ *Ibid, p.* 22.

§ Sex horas somno, totidem des legibus æquis;
Quatuor orabis, des epulisque duas;
Quod superest ultro sacris largite camœnis.
Co. Litt. 64. *b.*

Finch, he should be ruined ;* he commonly studied some sixteen hours a day.† Though, when the Courts were sitting, he attended them with regularity, and never failed to have his note-book and pen and ink ready ; and in the evening, he posted his gatherings into a fair book.‡ Lastly, he regularly read Littleton every Christmas.§

Though he well knew that "Lady Common Law must lie alone," yet he did not issue an interdict against every kind of recreation. His amusements, however, were all of a grave and sober cast. He was much attached to music, more especially as he could enjoy it in his own chamber, and his great delight was to play upon his base, or lyra viol, which he used to touch lute-fashion upon his knees,‖ or he would purchase an old virginal to play upon.** By way of ensuring entertainment at home, he would, perhaps, keep a monkey or a parrot.†† Above all things he eschew-

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* "Sir Heneage Finch used to say, 'Study all morning and talk all afternoon.'" *North's Discourse on the Study of the Law, p.* 8.

† "He studied many years at the rate of sixteen hours a day." *Burnet's Life of Hale, p.* 6.

‡ *Life of North, v.* i. *p.* 31. § *Ibid.*

‖ *Life of North, v.* i. *p.* 15. ** *Ibid.*

†† Sir Thomas More "kept an ape, a fox, a ferret, a weasel, and other beasts more rare." *Preface to Roper's Life of More, Singer's Edition, p.* xi.

ed stage-plays;* instead of which, he would recreate himself after commons in an evening with a walk under the cloisters, in company with some discreet fellow-student, where he would put cases, for he thought no man could be a good lawyer who was not a good put-case.† Upon occasion he would mingle some lay-studies, *in eodem subjecto*, with the body of the common law, such as natural philosophy, or the mathematics.‡ He never went to public feasts, nor gave entertainments;§ and even if his purse flowed sufficiently, a petit-supper and a bottle with a friend always pleased him best.‖ Neither the dancing nor the fencing schools were frequented by him;** and his dress was never gay, and in the height of the mode, like other Inns of Court gentlemen,†† who indulged in airs of dressing; but plain, sometimes even to negligence.‡‡

At length, after some eight years probation, (for he thought *prepropera praxis* a crying evil,)

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* "He resolved, upon his coming to London, where he knew the opportunities of such sights would be more frequent and inviting, never to see a play again, to which he constantly adhered." *Life of Hale, p.* 4.

† *Life of North, vol.* i. *p.* 19.

‡ *Roger North's Discourse, p.* 9. *Life of Hale p.* 13.

§ *Life of Hale, p.* 15. ‖ *Life of North, vol.* i. *p.* 46.

** *Ibid. p.* 16. †† *Ibid. p.* 44.

‡‡ *Life of Hale, p.* 10. *Ante. vol.* i. *p.* 125.

and having well performed all his exercises, he was called to the bar, *ex debito justitiæ*, and not *ex gratiâ*;* nor did he seek, by any indirect means, to get a bar-gown on his back.† He did not obtrude himself upon attorneys; but diligently attended the court, and took notes, and if chance, or a friend, brought a motion, of course it was welcome.‡ He made not a Trojan-siege of a suit, but sought to bring it to a set-battle in a speedy trial,§ and he accounted the very pleading of a poor widow's honest cause sufficient fee, as conceiving himself then the King of Heaven's advocate, bound *ex officio* to prosecute it.‖ In court he never shewed himself a brabbling and tumultuous lawyer;** nor, on the other hand, was he to be dawted with threatenings.†† Knowing that the way to the heights of knowledge, is through humility's gate,‡‡ he avoided over-much boldness and confidence, following in his speaking the philosopher's rule, *sit oratio pressa, non audax.*§§

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* "He was not called to the bar *ex gratiâ*, or for favour, as when the person is not of standing, or hath not performed his exercises." *Life of North*, v. vi. *p.* 48.

† Jefferies, "by some means or other, got a bar-gown on his back." *Lives of the Chancellors, vol.* i. *p.* 179.

‡ *Life of North*, v. i. *p.* 49. § *Fuller's Holy State*, *p.* 52.

‖ *Fuller's Holy State*, *p.* 53. ** *Moor's Rep. p.* 827.

†† *Life of Hale*, *p.* 17. ‡‡ *Fulbeck's Preparative.*

§§ *Phillips's Directions*, *p.* 21.

At last he, perchance, reached the preferment of a puisne judge, and found God's blessing on him and his posterity.

The discreet and noble young gentleman, who designed at the Inns of Court to perfect himself in his accomplishments, thought it no shame to apply himself to learn the laws of the kingdom. He knew, that if he needed not the knowledge himself, he could give it away to the poor, and that, when made a justice in his county, his law would enable him to settle many petty differences between his neighbours, which would be easier ended in his own porch than in Westminster Hall.* Nay, it would fit him to be an able parliament-man, which ought to be the top of an English gentleman's ambition.†

Nor did he neglect the lighter accomplishments befitting his gentle degree. He learned to sing, and to exercise himself in all kinds of harmony, and practised dancing and other noblemen's pastimes;‡ so that the ancients of his inn much praised the measures which he trod in the post revels. He thought that dancing might be an introduction unto the first moral virtue, called prudence, when mixed with study, as an honest and

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* *Fuller's Holy State, p.* 150, 151.

† *Burnet's Own Times, vol.* iv. *p.* 435.

‡ *Fortescue de laudibus, c.* 50.

moderate disport, to recomfort and quicken the vital spirits, lest by long travailing, and by being much occupied in contemplation or remembrance of things grave and serious, they might happen to be fatigate, or perchance oppressed.* His other recreations were chiefly shooting, leaping, bowling, and the like, which stir up a good strong motion, but do not over-fatigue the body;† but he thought the most honourable exercise, and that which beseemed the estate of every noble person, was to ride surely and clean on a great horse and a rough,‡ and thus, although he could not, with the Hevenninghams, of Suffolk, count five-and-twenty knights of his family, or with the Nauntons, shew that his ancestors had seven hundred pounds a year before the Conquest, yet, in birth, breeding, and behaviour, he shewed himself "The true Gentleman."

SIR JOHN MARKHAM, LORD CHIEF JUSTICE OF THE KING'S BENCH.

"John Markham was born at Markham, in Nottinghamshire, descended of an ancient and worthy familie. He employed his youth in the studying of the municipal law of this realm, wherein he

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* *Sir T. Elyott's Governor, p.* 70.

† *Phillips's Directions, p.* 198.

‡ *Sir T. Elyott's Governor, p.* 57.

attained to such eminence, that King Edward the Fourth knighted him, and made him Lord Chief Justice of the King's Bench, in the place of Sir John Fortescue, that learned and upright judge, who fled away with King Henrie the Sixth.

Yet Fortescue was not missed, because Markham succeeded him; and that losse, which otherwise could not be repaired, now could not be perceived. For though these two judges did severally lean to the sides of Lancaster and York, yet both sate upright in matters of judicature.

We will instance and insist on one memorable act of our judge, which, though single in itself, was plurall in the concernings thereof; and let the reader know that I have not been carelesse to search, though unhappy not to find, the originall record, perchance abolished on purpose, and silenced for telling tales to the disgrace of great ones. We must now be contented to write this story out of the English Chronicles; and let him die of drought without pity, who will not quench his thirst at the river, because he cannot come at the fountain.

King Edward the Fourth, having married into the family of the Woodvilles, (gentlemen of more antiquity than wealth, and of higher spirits than fortunes,) thought it fit for his own honour to bestow honour upon them. But he could not so easily provide them of wealth as titles.—For ho-

nour he could derive from himself, like light from a candle, without any diminishing of his own lustre; whereas, wealth flowing from him, as water from a fountain, made the spring the shallower. Wherefore, he resolved to cut down some prime subjects, and to engraff the Queen's kindred into their estates, which otherwise, like suckers, must feed on the stock of his own exchequer.

There was at this time one Sir Thomas Cook, late Lord Maior of London, and Knight of the Bath, one who had well licked his fingers under Queen Margaret, (whose wardroper he was, and customer of Hampton,) a man of great estate. It was agreed that he should be accused of high treason, and a commission of Oyer and Terminer granted forth to the Lord Maior, the Duke of Clarence, the Earl of Warwick, the Lord Rivers, Sir John Markham, Sir John Fogg, &c. to try him in Guild Hall: and the King, by private instructions to the Judge, appeared so farre, that Cook, though he was not, must be found guilty, and if the Law were too short, the Judge must stretch it to the purpose.

The fault laid to his charge was, for lending moneys to Queen Margaret, wife of King Henrie the Sixth; the proof was the confession of one Hawkins, who, being racked in the Tower, had confessed so much. The counsell for the King, hanging as much weight on the smallest wier as

it would hold, aggravated each particular, and by their rhetoricall flashes blew the fault up to a great height. Sir Thomas Cook pleaded for himself, that Hawkins, indeed, upon a season came to him, and requested him to lend one thousand marks, upon good security. But he desired first to know for whom the money should be: and understanding it was for Queen Margaret, denyed to lend any money, though at last Hawkins descended so low as to require but one hundred pounds, and departed without a peny lent him.

Judge Markham, in a grave speech, did recapitulate, select, and collate the material points on either side, shewing that the proof reached not the charge of high treason, and misprision of treason was the highest it could amount to, and intimated to the jurie, to be tender in matter of life, and discharge good consciences.

The jurie, being wise men, (whose apprehensions could make up an whole sentence of every nod of the judge,) saw it behoved them to draw up treason into as narrow a compasse as might be, lest it became their own case; for they lived in a troublesome world, wherein the cards were so shuffled, that two kings were turned up trump at once, which amazed men how to play their games. Whereupon they acquitted the prisoner of high treason, and found him guilty, as the judge directed.

Yet it cost Sir Thomas Cook, before he could get his libertie, eight hundred pounds to the queen, and eight thousand pounds to the king: a summe, in that age, more sounding like the ransom of a prince, than the fine of a subject. Besides, the lord Rivers (the queen's father) had, during his imprisonment, despoyled his houses, one in the city, another in the countrey, of plate and furniture, for which he never received a penie recompence. Yet God righted him of the wrongs men did him, by blessing the remnant of his estate to him, and his posterity, which still flourish at Giddy-Hall, in Essex.

As for Sir John Markham, the king's displeasure fell so heavy on him, that he was outed of his place, and Sir Thomas Billing put in his room, though the one lost that office with more honour than the other got it, and gloried in this, that though the king could make him no judge, he could not make him no upright judge. He lived privately the rest of his days, having (besides the estate got by his practice) fair lands by Margaret, his wife, daughter and coheir to Sir Simon Leak, of Cotham, in Nottingham, whose mother, Joan, was daughter and heir of Sir John Talbot, of Swannington, in Leicestershire. (*Fuller's Holy State, p.* 274.)

"Sir Nicholas Bacon, who was keeper of the

great seal of England, when queen Elizabeth, in her progress, came to his house at Gorhambury, and said to him, 'My lord, what a little house you have gotten!' answered her, 'Madam, my house is well, but it is you that have made me too great for my house." (*Bacon's Apothegms.*)

PUNISHMENT OF THE PILLORY.

PILLORY is said to be a French word, and to be derived of the French word *pilastre*, a pillar, *columna*. Et est lignea columna in quâ collum insertum premitur; and thereupon in law it is called *collistrigium*, quia in eo collum hominum constringitur. This punishment is very ancient, for the Saxons called it *healtrauz*, so called for straining the neck. (*Coke's* 3 *Inst.* 219.) This mode of correction has been very wisely abolished in all cases, except on convictions for perjury, and it is very questionable whether it might not be advisable to abandon it altogether. Some shocking instances are recorded of the fatal consequences of exposing criminals in this way to the unrestrained rage of the populace.

"Both the trebuchetum and the collistrigium," observes Mr. Barrington, (Observations on Assisa Panis et Cerevisæ) "were intended 'magis ad ludibrium, et infamiam, quam ad pœnam,' say the Glossaries. It may, therefore, well deserve the consideration of a judge, who inflicts the punish-

ment of the pillory, (as it becomes at present the great occasion of mobs and riots) whether it can be reconciled to the original intention of the law, in this mode of punishment; as also if this riotous scene ends in the death of the criminal, whether he is not in some measure accessory both to the riot and the murder." In what follows there is something bordering on the ludicrous: "The chief intention of setting a criminal in the pillory is, that he should become infamous and known for such afterwards by the spectators. Can an offender, whose face is covered with rotten eggs and dirt, be distinguished, so as to prevent his gaining a new credit with those who have occasion afterwards to deal with him?" Emlyn, in the preface to his edition of the State Trials, observes, upon the practicability, and upon the obligations on the officers of the law to protect persons in the pillory from injurious treatment, and inveighs against the neglect of affording such protection. Mr. Barrington has collected some curious particulars respecting the *pillorium*, or *collistrigium* and the *trebuchetum*. (*State Trials*, *vol.* vii. *p.* 1207.)

By Holt, Chief Justice, to stand *in* the pillory, or *on* the pillory, is the same thing in judgment, and both signify to stand *in* the pillory: 2 *Mod. Rep.* 885. The judgment now is, that the offender shall "be set *in* and *upon* the pillory;" and

therefore, if the under-sheriff remit part of the judgment, by only setting him *upon* the pillory, an attachment lies.

In the case of The King *v.* Beardmore, *(Burrow's Rep. vol.* ii. *p.* 792,) an attachment was moved for against Beardmore, the under-sheriff, for a contempt of Court, in remitting part of the sentence pronounced upon John Shebbeare, viz. "That he be set IN and *upon* the Pillory." Affidavits were filed for the prosecution, stating "that the defendant only stood *upon the* platform of the pillory, unconfined and at his ease, attended by *a servant in livery*, (which servant and livery were hired for this occasion only,) holding an umbrella over his head all the time: but his *head, hands, neck,* and *arms,* were not at all confined, or put *into* the holes of the pillory; only that he sometimes put his hands *upon* the holes of the pillory, in order to rest himself."

Mr. Beardmore, in reply, swore "that he meant that the sentence should be executed in the *usual* manner; that he stood at a shop opposite the pillory, during the whole time, without almost ever taking his eyes off it during the whole time, in order to see the sentence properly executed; and that he would have obliged him to stand in what he took to be the proper manner, if Shebbeare had offered to withdraw himself from such position." And he proved, by numerous affidavits,

that the manner in which Shebbeare actually stood, was *with his hands in and* THROUGH *the small holes*, and his *head and face* FULLY EXPOSED through (some of the affidavits said *in* and through) the LARGE hole; and that he stood so during the whole time. It was sworn by several persons that standing without *confining the head* was the *usual ordinary* manner, and had been so, for 30 or 40 years, in Middlesex; and that it had been usual in that county, for a great many years backward, and ever since one or two persons, who were locked down in the pillory, had been killed. But Mr. Beardmore and his counsel admitted that his arms were not put through the small holes, and that the pillory was NOT *shut down* upon Shebbeare, nor his HEAD *absolutely* THRUST THROUGH IT; which the sheriff's officers swore they did not apprehend to be necessary, unless the culprit was *refractory*. Neither was it pretended that the *upper* board of this pillory was at all *let down* over his neck.

The whole Court were of opinion that the under-sheriff had neglected his duty, and commended Mr. Attorney-General for bringing this complaint before them; as the honour and dignity of the Court, and the end and very essence of justice, were materially concerned in the due and regular execution of their sentences. He was sentenced to pay a fine of 50l. and to be committed to the

custody of the Marshal for two months, and till the fine was paid.

In April, 1732, Edward Dalton and Richard Griffiths were tried at the Old Bailey for the murder of John Waller, in the pillory, by pelting him with *cauliflower stalks*, &c. and found guilty, and both executed at Tyburn.

Stephen M^{c} Daniel, John Berry, James Egan, and James Salmon, were convicted of a wicked conspiracy to procure two youths to commit a robbery on Salmon, in order to obtain for themselves the rewards for the apprehending of highwaymen. They were sentenced to be imprisoned seven years in Newgate, and to be pilloried twice. On Friday, the 5th of March, 1756, M^{c} Daniel and Berry stood in the pillory, near Hatton Garden, and were so severely handled by the populace, that it was with the utmost difficulty that one of the sheriffs and the keeper of Newgate, who stood in a balcony just by, prevented their being utterly destroyed; and so great was the mob, that the peace-officers found it impossible to protect the prisoners from their fury. On Monday, the 8th, Egan and Salmon stood in Smithfield. They were instantly assaulted with showers of oyster-shells, stones, &c. and had not stood above half an hour, before Egan *was struck dead*, and Salmon so dangerously wounded in the head, that it was thought impossible he could re-

cover. Whatever punishment they might deserve from the law, it is certain they ought not to be killed through the rage of the populace. (*Howell's State Trials, vol.* xix. *p.* 809.)

ANECDOTE OF SIR W. NOY, ATTORNEY GENERAL TO KING CHARLES THE FIRST.

Three graziers at a fair left their money with their hostess, while they went to transact their business. A short time after one of them returned, and under pretence that they had occasion for the whole money, received it from the hostess, and made his escape with it. The other two sued the woman for delivering that which she had received *from the three*, before the *three* came and demanded it. The cause was tried, and a verdict found against the woman; when Mr. Noy, then making his first appearance at the bar, desired to be feed by her, because he could not plead without it. He then moved in arrest of judgment, that he was retained by the defendant, and that the case was this:—the defendant hath received the money of the three together, and confesses that *she was not to deliver it until the same three demanded it*, and therefore the money is ready,—*let the three come, and it shall be paid.* This motion altered the whole course of proceeding, and first brought Mr. Noy into notice.

CURIOUS CUSTOMS OF MANORS.

Rochford,—County of Essex.

On King's Hill, in Rochford, in the county of Essex, on every Wednesday morning, next after Michaelmas day, at cocks' crowing, there is, by ancient custom, a court held by the lord of the honour of Raleigh, which is vulgarly called, the Lawless Court. The steward and suitors whisper to each other, and have no candles, nor any pen and ink, but supply that office with a coal; and he that owes suit or service thereto, and appears not, forfeits to the lord double his rent, every hour he is absent. The Court is called Lawless, because held at an unlawful or lawless hour, or *quia dicta sine lege.* The title of it in the rolls runs thus:

King's Hill, in Rochford } § }

Curia de Domino Rege,
Dicta sine Lege,
Tenenda est ibidem,
Per ejusdem consuetudinem,
Ante ortum solis
Luceat nisi polus,
Nil scribit nisi colis.
Totius voluerit,

Gallus ut cantaverit;
Per cujus solum sonitum
Curia est summonita.
Clamat clam pro Rege,
In Curia sine Lege,
Et nisi cito venerint
Citius pœnituerint;
Et nisi clam accedant
Curia non attendant;
Qui venerit cum lumine
Errat in regimine;
Et dum sunt sine lumine
Capti sunt in crimine;
Curia sine Cura,
Jurati de Injuria.

Tenta ibidem Die Mercurii (ante Diem) proximi (r. proxime or proximo) post Festum Sancti Michaelis Archangeli, Anno Regni Regis, &c.

This Lawless Court is imperfectly mentioned by Camden in his description of Essex; who says, "this servile attendance was imposed on the tenants of that manor, for conspiring, at the like unseasonable time, to raise a commotion."

Kidlington,—County of Oxford.

At Kidlington, in Oxfordshire, the custom is, that on Monday after Whitsun week, there is a fat live lamb provided, and the maids of the town, having their thumbs tied behind them, run after

it, and she that with her mouth takes and holds the lamb, is declared lady of the lamb; which being dressed, with the skin hanging on, is carried on a long pole before the lady and her companions, to the green, attended with music, and a morisco dance of men, and another of women, where the rest of the day is spent in dancing, mirth, and merry glee. The next day the lamb is part baked, boiled, and roast, for the lady's feast, where she sits majestically, at the upper end of the table, and her companions with her, with music and other attendants, which ends the solemnity.

Montgomery,—The town of.

Whereas, through scolds and whores, many evils arise in the town, viz. strifes, fightings, defamations, &c. and many other disturbances by their shoutings and bawling, our practice concerning them is, that when they are taken, they are adjudged to the goging stode,* and there to stand with their feet naked, and their hair hanging and dishevelled, for such time as they may be seen by all persons passing that way, according to the will of our chief bailiffs.

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* The same as cucking stool, which is a punishment invented for the punishment of scolds, by ducking them in the water. *Lamb. Eiren. b.* i. *chap.* 12.

Coleshill,—County of Warwick.

They have an ancient custom at Coleshill, in the county of Warwick, that if the young men of that town can catch a hare, and bring it to the parson of the parish, before ten of the clock on Easter Monday, the parson is bound to give them a calf's head, and a hundred of eggs for their breakfast, and a groat in money.

Warham,—County of Dorset.

By the custom of Warham, in the county of Dorset, both males and females have a right, equally, in the partition of lands and tenements: Tenementa in Warham sunt partabilia inter Masculos et Fœminas, says the record. And it is so unusual a custom, that perhaps it may be hard to find the like elsewhere in England.

Dunmow,—County of Essex.

Robert Fitzwalter, living long beloved of King Henry, son of King John, as also of all the realme, betook himself, in his latter dayes, to prayer and deeds of charity, gave great and bountifull alms to the poor, kept great hospitality, and re-edified the decayed prison (priory) of Dunmow, which one Juga, (Baynard,) a most devout and religious woman, being in her kind his ancestor, had builded; in which prison (priory) arose a

custome, begun and instituted, eyther by him, or some other of his successors, which is verified by a common proverbe, or saying, *viz.* That he which repents him not of his marriage, either sleeping or waking, in a year and a day, may lawfully go to Dunmow, and fetch a gammon of bacon. It is most assured that such a custom there then was, and that this bacon was delivered with such solemnity and triumphs, as they of the priory and townsmen could make. I have inquired of the manner of it, and can learn no more, but that it continued untill the dissolution of that house, as also the abbies. And that the party or pilgrim for bacon was to take his oath before prior and convent, and the whole town, humbly kneeling in the church-yard upon two hard pointed stones, which stones, some say, are there yet to be seen in the prior's church-yard; his oath was administered with such long process, and such solemn singing over him, that, doubtless, must make his pilgrimage (as I may term it,) painfull; after, he was taken up on men's shoulders, and carried, first, about the priory church-yard, and after, through the town, with all the fryers and brethren, and all the town's-folke, young and old, following him, with shouts and acclamations, with his bacon borne before him, and in such manner, (as I have heard,) was sent home with his bacon: of which I find, that some had a gammon, and others a

fleche, or a flitch; for proof whereof, I have, from the records of the house, found the names of three several persons that at several times had it.

Anno 23 Henry VI. (1445.) Memorandum, that one Richard Wright, of Badbury, near the City of Norwich, in the County of Norfolk, Labourer, (*plebeius*,) came to Dunmow, and required the bacon, to wit, on the 27 of April, in the 23d year of the reign of King Henry VI. and according to the form of the charter, was sworn before John Cannon, Prior of the place and the convent, and very many other neighbours, and there was delivered to him, the said Richard, a side, or flitch of bacon.

Anno 7 of Edward IV. (1467.) Memorandum, that one Stephen Samuel, of Ayston-Parva, in the County of Essex, Husbandman, on the day of the Blessed Virgin, in Lent, (25 March,) in the 7th year of King Edward IV. came to the Priory of Dunmow, and required a gammon of bacon, and he was sworn before Roger Bulcott, then Prior of the place and the convent, and also before a multitude of other neighbours, and there was delivered to him a gammon of bacon.

Anno 2 Henry VIII. Memorandum, that in the year of our Lord 1510, Thomas le Fullar, of Cogshall, in the County of Essex, came to the Priory of Dunmow, and on the 8th day of September, being Sunday, in the second year of King

Henry VIII. according to the form of the charter, was sworn before John Tils, the Prior of the house and the convent, and also before a multitude of neighbours, and there was delivered to him, the said Thomas, a gammon of bacon.

Hereby it appeareth, that it was according to a charta, or donation, given by some conceited benefactor to the house; and it is not to be doubted, but that at such a time, the bordering towns and villages resorted, and were partakers of their pastimes, and laught to scorn the poor man's paynes.

The Form of the Oath taken by those at Dunmow, who are to have the Bacon.

You shall swear by custom of confession,
If ever you made nuptial transgression;
Be you either married man or wife,
If you have brawls or contentious strife;
Or otherwise at bed or at board
Offended each other in deed or word:
Or since the parish clerk said Amen,
You wished yourselves unmarried agen;
Or in a twelve month and a day,
Repented not in thought any way;
But continued true in thought and desire,
As when you joined hands in the quire.
If to these conditions, without all feare,
Of your own accord you will freely sweare,

A whole gammon of bacon you shall receive
And bear it hence with love and good leave:
For this is our custom at Dunmow well knowne;
Though the pleasure be ours, the bacon's your own.

Chester,—City and County.

Randall Blundeville, Earl of Chester, towards the latter end of the reign of King Richard I. being suddenly besieged by the Welsh, in the castle of Ruthelent, in Flintshire, sent to his constable of Cheshire, one Roger Lacy, (for his fierceness named Hell,) to hasten with what force he could to his relief.

It happened to be on Midsummer-day, and a great fair then held at Chester; whereupon, Roger immediately got together a great lawless mob of fiddlers, players, cobblers, and the like, and marched instantly towards the Earl; and the Welsh, perceiving a great multitude approaching, raised the siege and fled.

The earl being thus freed, comes back with his constable to Chester; and in memory of this service, by a charter grants to Roger Lacy, and his heirs, power over all the fiddlers, letchers, whores, and cobblers, in Chester.

About the latter end of the reign of King John, or beginning of King Henry III. Roger Lacy being dead, his son, John Lacy, by the following deed,

granted to one Hugh Dutton, his steward, and to his heirs, the rule and authority over all the letchers and whores in that county, *viz.*

"Know all men present and to come, that I, John Lacy, Constable of Chester, have given and granted, and by this, my present charta, have confirmed to Hugh de Dutton, and his heirs, the government of all the letchers and whores of all Cheshire, as freely as I hold that government of the Earl, saving my right to my heirs."

Though the original grant makes no mention of giving rule over fiddlers and minstrels, yet ancient custom has now reduced it only to the minstrelsey; for, probably, the rout, which the constable brought to the rescue of the earl, were debauched persons, drinking with their sweethearts at the fair, the fiddlers that attended them, and such loose persons as he could get.

In the 14th Henry VII. a *quo warranto* was brought against Lawrence Dutton, of Dutton, Esquire, to shew why he claimed all the minstrels of Cheshire and the City of Chester to appear before him, or his steward, at Chester, yearly, on the Feast of St. John Baptist, and to give him at the said Feast, four flaggons of wine and a lance; and also every minstrel then to pay him fourpence-halfpenny; and why he claimed from every whore in Cheshire and the City of Chester, exercising her

trade, fourpence, to be paid yearly, at the Feast aforesaid. To which he pleaded prescription.

In the statutes of the 14th Eliz. cap. 5, and the 39th Eliz. cap. 4, the first entitled, " An Act for the Punishment of Vagabonds, and for the Relieve of the Poor and Impotent;" and the latter, entitled, " An Act for Punishment of Rogues, Vagabonds, and Sturdy Beggars;" both now repealed, is inserted the following proviso, *viz.*

" Provided always, that this Act, or any thing therein contained, or any authority thereby given, shall not in any wise extend to disinherit, prejudice, or hinder, John Dutton, of Dutton, in the County of Chester, Esquire, his heirs, or assigns, for, touching, or concerning, any liberty, pre-eminence, authority, jurisdiction, or inheritance, which the said John Dutton now lawfully useth, or hath, or lawfully may, or ought to use, within the County Palatine of Chester, and the County of the City of Chester, or either of them, by reason of any ancient chartas of any Kings of this land, or by reason of any prescription, usage, or title whatsoever."

In the 43d Eliz. cap. 9, which continued the said Act of the 39th Eliz. the above clause was continued only for one year, except the said John Dutton, or his heirs, should procure the Lords

Chief Justices and Lord Chief Baron, or two of them, on hearing his allegations and proofs, to make certificate into the Chancery, to be there enrolled, that the said John Dutton, or his heirs, ought lawfully, (if no statute against rogues and beggars had been made,) by charta, tenure, or prescription, to have such liberty of licensing of minstrels, as he claimed and used.

In the statute of the 1st Jac. I. cap. 25, the same clause was continued, without limitation: so that it is probable such proof had then been made as is above mentioned.

And in the Act of the 13th Geo. II. cap. 5, commonly called the Vagrant Act, a like proviso is inserted in favour of the heirs or assigns of John Dutton, of Dutton, Esq. So that the right has now been established, by Act of Parliament, (ever since the year 1572,) above 200 years.

The heirs of the said Hugh Dutton enjoy the same power and authority over the minstrelsy of Cheshire, even to this day, and keep a court every year upon the Feast of St. John Baptist, at Chester, being the fair day, where all the minstrels of the county and city do attend and play before the Lord of Dutton upon their instruments: he or his deputy then riding through the city, thus attended, to the church of St. John Baptist, many gentlemen of the county accompanying him, and one walking before him in a surcoat of his arms, de-

picted upon taffeta; and, after divine service is ended, holds his court in the city, where he or his steward renews the old licenses granted to the minstrels, and gives such new ones as he thinks fit, under the hand and seal of himself or his steward, not presuming to exercise that faculty there without it. But now this dominion or privilege is, by a daughter and heir of Thomas Dutton, devolved to the Lord Gerard, of Gerard Bromly, in Staffordshire.

THE GOOD ADVOCATE.

He is one that will not plead that cause wherein his tongue must be confuted by his conscience. It is the praise of the Spanish souldier, that, (whilst all other nations are mercenary, and for money will serve on any side,) he will never fight against his own king: nor will our advocate against the sovereigne truth plainly appearing to his conscience.

1. *He not only hears, but examines his client, and pincheth the cause where he fears it is foundered.* For many clients in telling their case, rather plead than relate it, so that the advocate hears not the true state of it till opened by the adverse party. Surely the lawyer that fills himself with instructions, will travel longest in the cause without tiring. Others, that are so quick in searching, seldome search to the quick; and

those miraculous apprehensions who understand more than all, before the client hath told half, runne without their errand, and will return without their answer.

2. *If the matter be doubtfull, he will onely warrant his own diligence.* Yet some keep an assurance-office in their chamber, and will warrant any cause brought unto them, as knowing that if they fail, they lose nothing but what long since was lost,—their credit.

3. *He makes not a Trojan-siege of a suit, but seeks to bring it to a set battel in a speedy trial.* Yet sometimes suits are continued by their difficulty, the potencie and stomach of the parties, without any default of the lawyer. Thus have there depended suits in Gloucestershire, betwixt the heirs of the Lord Berkley and Sir Thomas Talbot, Viscount Lisle, ever since the reigne of King Edward the Fourth, untill now lately they were finally compounded.

4. *He is faithfull to the side that first retains him.* Not like Demosthenes, who secretly wrote one oration for Phormio, and another in the same matter for Apolodorus, his adversary.

5. *In pleading, he shoots fairly at the head of the cause, and having fastened, no frowns nor favours shall make him let go his hold.* Not snatching aside here and there, to no purpose, speaking little in much, as it was said of Anaxi-

menes, *That he had a flood of words, and a drop of reason.* His boldness riseth or falleth as he apprehends the goodnesse or badnesse of his cause.

6. *He joys not to be retained in such a cause, where all the right in question is but a drop blown up with malice to be a bubble.* Wherefore, in such triviall matters he perswades his client to sound a retreat, and make a composition.

7. *When his name is up, his industry is not down, thinking to plead not by his study, but his credit.* Commonly physicians, like beer, are best when they are old, and lawyers, like bread, when they are young and new. But our advocate grows not lazie; and if a leading case be out of the road of his practice, he will take pains to trace it thorow his books, and prick the footsteps thereof wheresoever he finds it.

8. *He is more carefull to deserve, than greedy to take fees.* He accounts the very pleading of a poore widow's honest cause sufficient fees, as conceiving himself then the King of Heaven's advocate, bound *ex officio* to prosecute it. And, although some may say, that such a lawyer may even go live in Cornwall, where it is observed that few of that profession hitherto have grown to any livelihood, yet shall he (besides those two felicities of common lawyers, that they seldome

die either without heirs or making a will,) find God's blessing on his provisions and posterity.

We will respite him a while till he becomes a judge, and then we will give an example of both together." (*Fuller's Holy State, p.* 51.)

"Sir Edward Coke was wont to say, when a great man came to dinner with him, and gave him no knowledge of his coming, 'Sir, since you sent me no word of your coming, you must dine with me; but if I had known of it in due time, I would have dined with you."—(*Bacon's Apothegms.*)

"Sir Thomas More had only daughters at the first, and his wife did ever pray for a boy. At last she had a boy, which being come to man's estate proved but simple. Sir Thomas said to his wife, "Thou prayedst so long for a boy that he will be a boy as long as he lives."—(*Bacon's Apothegms.*)

BURNET'S RECOMMENDATION OF THE LAW.

In the concluding part of the History of his Own Times, in which he notices the prevailing errors in education, Burnet strongly advises the young gentlemen of his day to acquire some

knowledge of the law, which, as he asserts, will make them very useful in their country. "A competent measure of the knowledge of the law is a good foundation for distinguishing a gentleman; but I am in doubt whether his being some time in the Inns of Court will contribute much to this, if he is not a studious person. Those who think they are there only to pass away so many of their years, commonly run together and live both idly and viciously.* I should imagine it a much better way, though it is not much practised, to get a learned young lawyer, who has not got into much business, to come and pass away a long vacation or two with a gentleman, to carry him through such an introduction to the study of the law, as may give him a full view of it, and good directions how to prosecute his study in it. A competent skill in this makes a man very useful in his country, both in conducting his own affairs and in giving good advice to those about him. It will enable him to be a good justice of peace, and to settle matters by arbitration, so as to prevent law suits; and, which ought to be the top of an

* The Bishop spoke feelingly upon this subject. His son, Thomas Burnet, afterwards Mr. Justice Burnet, during his residence at the Temple, lived a very dissipated life. Some account of him will be found in another part of these volumes.

English gentleman's ambition, to be an able Parliament man, to which no gentleman ought to pretend unless he has a true zeal for his country, with an inflexible integrity and resolution to pursue what appears to him just and right, and for the good of the public. The Parliament is the fountain of law, and the fence of liberty, and no sort of instruction is so necessary for a gentleman as that which may qualify him to appear there with figure and reputation."—(*Burnet, v.* iv. *p.* 434.)

AN EXTRAORDINARY EJECTMENT.

Every creature has its element, and finds its pleasure and subsistence in situations which to others would be destructive. To some men the prison, with its cell and its bars, has its own peculiar charm. It happened lately that a person of the name of Braybrook, was committed to the Fleet prison for debt, but his creditor, from motives of humanity towards the defendant's large family, did not declare against him, and he became in consequence supersedable. Instead of availing himself of this clemency and returning to his family, who were forced to go to the work-house, he obtained from time to time fictitious actions, and remained his own prisoner. He derived his support from the rent of his room, and the precarious bounty of *green-horn* prisoners. Several spirited collegians at length represented the mat-

ter to the Warden, and stated the hardship that a volunteer prisoner should, by occupying one of his rooms, deprive more deserving and necessitous persons of their privilege; in consequence of which, the Warden applied to the attorney in the actions and procured the necessary discharges, after which the prisoner was *expelled* by his brother collegians as an unworthy *fellow*, and the Governor *gave strict orders to the turnkeys never to admit him again!* Driven from his Eden, the unhappy debtor wandered forth:

"Then, looking back, all the Eastern side beheld
Of Paradise, so late his happy seat,
Waved over by that flaming brand; the gate
With dreadful faces throng'd, and fiery arms:
Some natural tears he dropp'd, but wiped them soon:
The world was all before him."—

THE BICAUD, OR TWO-TAILED GABBLER.

The following amusing *jeu d'esprit* may be found in the second volume of the Indicator.

"The preternatural history of the most degenerate animals of the human race.

No. 1. *The Bicaud, or Two-Tailed Gabbler.*

"Ο' Νομικος, in Greek.
Jurisconsultus, jurisperitus, in Latin.
L'Avvocato, in Italian.
L'Avocat, in French.

The Advocate, Counsellor, or Barrister, in English.

Latin summary. *Jurisconsultus* sive *bicaudis garrulus*, animal omnino singulare; vultu pallido, calloso, tristi, attamen procaci; tergore nigro, fluxo, anguino, quod exuit sponte suâ; mirabiliore autem cæsarie, albâ, pulverulentâ, intortâ quasi calamistro, bicaudi, quam simul expeditiusque deponit. Ingreditur, potiusve sedet, gregatim; et incidens in folia quædam papyri pertenuia, anglicè dicta *bank notes* sive *fees*, celat in perula instanter; exultatque in pedes posteriores, garritque gesticulaturque modo simiæ caudatæ.

"This is a very singular animal, chiefly remarkable for its having two tails at the back of its head, and for its being moved by the touch of certain thin leaves of the papyrus, or paper-tree, to get up on its hind legs, and utter a long discordant gabble. Its skin is black, hangs loosely about it, and can be cast by the animal at pleasure like that of a snake. What is still more extraordinary, it has this faculty also with regard to its two tails, and the pallid hairy kind of rug to which they are attached. The rug resembles the natural peruke of certain monkeys, or rather the curled rug which is left on the hind quarters of a dog. When it casts its outer skin, it generally appears in a closer one of the same colour; and some of the older *bicauds*, when they cast their

rug and two tails, produce another from beneath like a pig's. But this latter species is going out. The face is generally pale; and, like some of the larger tribe of monkeys, thoughtful and melancholy. A pert character is, nevertheless, usually observable in it, and even a hardness and want of feeling; though when young, and before its two tails are grown, or occasionally some time afterwards, it is often a sprightly creature. We have known some, who have little resemblance, however, to the rest of the species, exhibit a lively emotion at hearing music and poetry, and even at the sight of sculpture; and these will also roam about the fields with a mixed gravity and vivacity, like colts come to years of discretion.

"The *bicaud* farther resembles the monkey in being gregarious. Young and old assemble in different places every morning, before two or three aged ones, whose skins are bordered with ermine, and whose tails have grown to a size like those of African sheep, and hang forward on each side of their faces. The whole sight is very ridiculous, and resembles the well-known phenomenon of a council of crows. Some unfortunate animals, when they have been caught trespassing on their premises, are brought in, as if to be judged; and one *two-tailed gabbler* gets up at a time on his hind legs, and appears to reason on

the subject, making strange grins and gesticulations. Sometimes he seems to laugh; sometimes he raises his eye-brows, as if in astonishment; sometimes tosses his skin and two tails about in all the heat and flutter of an angry fine lady; and every now and then he turns over certain thicker leaves of the papyrus, of which there is always great plenty on the spot. All this looks as if something really were meant; but it has been well ascertained, by innumerable and anxious experiments, that the *bicaud* who gets up to gabble, is influenced, not by any interest in behalf of the culprit or of reason, but by his having secretly touched some of those thin leaves previously mentioned, which he immediately conveys into a pouch on his right side, and the possession of which puts him into a sort of transport. All the rest, who have not been so lucky, remain sitting as gravely as possible, except when nothing appears to be going forward: at which time they are as noisy and apparently as mischievous as a forest of monkeys, or a school in the master's absence, chattering, and mowing at each other the whole time, the younger especially.

"It is to be observed of this cunning and melancholy animal that there is none which it is so difficult to get beyond the usual instinct, or what may be called habit and precedent of its species. It is also bolder and more like a man, when it

casts its outer skin, but the moment the latter is resumed, relapses into its characteristic timidity, especially in presence of the old ones, at whose slightest muttering, it suspends its gabble, ducking and bowing, and drawing the air through its teeth, with an infinite gravity of deference. It seems to attach itself naturally to the rich and great; and, like most creatures of the anthropomorphite race, will sit at table, eat heartily, and drink more so, particularly wine, of which it is very fond. It is also extremely amorous, though after a coarse fashion; and we have known it dangerous for women to go near some of the very oldest. The latter, when observed, put on aspects so prodigiously grave and devout, that the one whose skin in advanced age is marked with certain golden stripes, has been facetiously called, *Keeper of the King's Conscience.*—(*Leigh Hunt.*)

"The former Sir Thomas More had sent him, by a suitor in Chancery, two silver flagons. When they were presented by the gentleman's servant, he said to one of his men, 'Have you to the cellar, and let him have of my best wine;' and, turning to the servant, said, 'Tell thy master, if he like it, let him not spare it.'" (*Bacon's Apothegms.*) Some similar anecdotes of Sir Thomas More will

be found in these volumes under the title of "Judicial Corruption."

REMARKABLE CASE OF THE PERRYS.

William Harrison, steward to lady Campden, at Campden, in Gloucestershire, about seventy years of age, went, August 16, 1660, to receive my lady's rents, which he did, and not returning home that night, gave cause to suspect he was murdered. After some time, John Perry, his servant, gave information before a justice of peace, that his brother Richard had robbed and murdered him, that his mother stood by whilst it was done, and that Richard had once before broke open his master's house, and robbed him. At the following Assizes, Joan, John, and Richard Perry, had two indictments preferred against them, one for breaking open the house of Mr. Harrison, and robbing him of 140*l.* in the year 1659, and the other for robbing and murdering him August 16, 1660. Upon the last indictment, the then Judge of Assize, Sir Christopher Turner, Knt. would not try them, because the body was not found: on the former indictment for the robbery, they pleaded "not guilty;" but on people's persuading them, they retracted their plea, and pleaded guilty; begging the benefit of his Majesty's most gracious pardon and act of oblivion, which was granted them: and though they pleaded guilty to this indictment, being prompted thereto, yet they all a

their deaths denied it. Yet at this assize, John Perry persisted in his story, that his mother and brother had murdered his master, and that they had attempted to poison him in gaol for his discovering it, so that he durst not eat or drink with them. And, at the next Assizes following, Joan, John, and Richard Perry, were, by the Judge of Assize, Sir Robert Hyde, Knt. tried upon the indictment of murder, and pleaded, not guilty; when John's confession before the justice was proved *vivâ voce*, by several witnesses who heard the same. He then told the Court, he was mad, and did not know what he had said. The other two, Richard and Joan Perry, declared they were wholly innocent of what they were accused, that they knew nothing of Mr. Harrison's death, nor what was become of him, and Richard said, his brother had accused others as well as him to have murdered his master, which the Judge bidding him prove, he said, that most of them that had given evidence against him, knew it; but naming nobody, nor any body speaking to it, the Jury found them all guilty.

Some days after, being brought to the place of execution, which was on Broadway Hill, within sight of Campden, the mother being reputed a witch, and to have so bewitched her sons, they could confess nothing while she lived, was first executed, (strange ignorance and superstition!) af-

ter which, Richard being on the ladder, professed as he had done all along, that he was wholly innocent of the fact for which he was to die, and that he knew nothing of Mr. Harrison's death, nor what was become of him, and did with great earnestness, beg and beseech his brother (for the satisfaction of the world and his own conscience) to declare what he knew concerning it. But he, with a dogged and surly carriage, told the people he was not obliged to confess to them; yet immediately before his death, said, He knew nothing of his master's death, nor what was become of him, but they might hereafter possibly hear.

It is strange that a Judge would order the execution of three persons for the supposed murder of a man, whose body was not found, or heard of at the time of trial, upon the confession of a madman or an enthusiast.—However, Mr. Harrison, some years after, appeared alive; and in a letter to Sir Thomas Overbury, of Burton, in Gloucestershire, gave an account how that very night, August 16th, returning home, after receiving the rents, he was set upon, and forced by several stages to the sea side, put on board a ship, and carried into Turkey, where he was sold for a slave to a physician, and continued with him for about a year and three quarters, when his master died; then he made the best of his way to a sea-port, and with great difficulty got on board a Hamburgh

ship bound for, and arrived safe at, Lisbon; from whence, by the means of an English merchant, he got on board an English vessel, and arrived safe at Dover, and from thence to his own home, to the surprise of all the country. This account was sent with the following letter from Sir Thomas Overbury to Dr. Shirley, who published it:

Sir,

I herewith send you a short narrative of that no less strange than unhappy business, which some years since happened in my neighbourhood: the truth particular whereof I am able to attest: and I think it may very well be reckoned among the most remarkable occurrences of this age. You may dispose of it as you please, and in whatever I can serve you, you may freely command me, as

Your most affectionate Kinsman,
and humble Servant,
Thomas Overbury.

LORD CHIEF JUSTICE HOLT.

In the reign of Queen Anne, 1704, several freemen of the Borough of Aylesbury, who proved their qualifications, were refused the liberty of voting at the election of a member of parliament. The law in such cases imposes a fine on the returning officer of 100l. for every such offence. On this principle, they applied to Lord Chief Justice Holt, who ordered the officer to be arrested.

The House of Commons, alarmed at this step made an order of the House to make it penal for either judge, counsel, or attorney, to assist at the trial; however, the Lord Chief Justice and several lawyers were hardy enough to oppose this order, and brought it on in the Court of King's Bench. The House, highly irritated at this contempt of their order, sent a Sergeant at Arms for the judge to appear before them; but that resolute defender of the laws, bade him, with a voice of authority, "be gone;" on which they sent a second message by their Speaker, attended by as many members as espoused the measure. After the Speaker had delivered his message, his lordship replied to him in the following remarkable words: "Go back to your chair, Mr. Speaker, within this five minutes, or, you may depend on it, I will send you to Newgate. You speak of *your* authority; but I will tell you I sit here as an interpreter of the laws, and a distributor of justice, and were the whole House of Commons in your belly, I would not stir one foot!" The Speaker was prudent enough to retire, and the House were equally prudent in letting the affair drop.

The same judge had sent, by his warrant, one of the French prophets, a foolish sect that started up in his time, to prison; upon which Mr. Lacy, one of their followers, came to my Lord's house, and desired to speak to him. The servants told

him their lord was not well, and saw no company that day. "But tell him," said Lacy, "that I must see him, for I come to him from the Lord God." Which being told the Chief Justice, he ordered Lacy to come in, and asked him his business. "I come," said he, "from the Lord, who has sent me to thee, and would have thee grant a *nolle prosequi* for John Atkins, his servant, whom thou hast sent to prison." "Thou art a false prophet, and a lying knave," answered the judge. "If the Lord had sent thee, it would have been to the Attorney General, for the Lord knows it is not in my power to grant a *nolle prosequi*; but I can grant a warrant to commit thee to bear him company, which I certainly will."

THE COMMON BARRETER.

"A Barreter is a horse-leach, that onely sucks the corrupted blood of the law. He trades onely in tricks and quirks: his highway is in by-paths, and he loveth a cavill better than an argument; an evasion, than an answer. There be two kinds of them: either such as fight themselves, or are trumpeters in a battel, to set on others. The former is a profest dueller in the law, that will challenge any, and in all suit-combats be either principall or second.

"*References and compositions he hates as bad as*

an hangman hates a pardon. Had he been a scholar, he would have maintained all paradoxes; if a chirurgeon, he would never have cured a wound, but always kept it raw; if a souldier, he would have been excellent at a siege; nothing but *ejectio firmæ* would out him.

" *He is half-starved in the lent of a long vacation, for want of employment*; save onely that then he brews work to broach in term-time. I find one so much delighted in law-sport, that when Lewis, the King of France, offered to ease him of a number of suits, he earnestly besought his Highness to leave him some twenty or thirty behind, wherewith he might merrily passe away the time.

" *He hath this property of an honest man, that his word is as good as his bond*; for he will pick the lock of the strongest conveyance, or creep out at the lattice of a word. Wherefore he counts to enter common with others as good as his own severall; for he will so vex his partners, that they had rather foregoe their right, than undergoe a suit with him.—As for the trumpeter Barreter;

" *He falls in with all his neighbours that fall out, and spurres them on to go to law.* A gentleman, who in a duell was rather scratcht than wounded, sent for a chirurgeon, who, having opened the wound, charged his man with all speed.

to fetch such a salve from such a place in his study. '*Why,* (said the gentleman,) *is the hurt so dangerous?*' '*Oh, yes,* (answered the chirurgeon,) *if he returns not in post-haste, the wound will cure itself, and so I shall lose my fee.* Thus the Barretour posts to the houses of his neighbours, lest the sparks of their small discords should go out before he brings them fuell, and so he be broken by their making up. Surely, he loves not to have the bells rung in a peal; but he likes it rather when they are jangled backwards, himself having kindled the fire of dissension amongst his neighbours.

"*He lives till his clothes have as many rents as himself hath made dissensions.* I wonder any should be of this trade, when none ever thrived on't, paying dear rates for their counsells: for bringing many cracked titles, they are fain to fill up their gaping chinks with the more gold.

"But I have done with this wrangling companion, half afraid to meddle with him any longer, lest he should commence a suit against me for describing him. (*Fuller's Profane State,* 408.)

STRIKING IN THE KING'S PALACE.

Contempts against the King's Palace, or Courts of Justice, have always been looked upon as high

misprisions: and, by the ancient law before the Conquest, fighting in the King's Palace, or before the King's Judges, was punished with death. At present, by statute 33 Hen. VIII. c. 12, A. D. 1541, malicious striking in the King's Palace, wherein his royal person resides, whereby blood is drawn, is punished by perpetual imprisonment, and fine at the King's pleasure, and also with loss of the offender's right hand; the solemn execution of which sentence is prescribed in the statute at length. A few months after this act had passed, Sir Edmond Knevet was prosecuted for this offence: the solemnities of the punishment required by the act are therein stated.

"This tenth of June, 1541, Sir Edmond Knevet, Knight, of Norfolke, was arraigned before the King's Justices, (sitting in the great Hall at Greenwich, Master Gage, Comptroller of the King's Household, Master Suthwell, Sir Anthony Brown, Sir Anthony Wingfield, Master Wrisley, and Edmond Peckham, Cofferer of the King's Household,) for striking of one Master Clere, of Norfolke, servant with the Earle of Surrey, within the King's House, in the Tennis-Court. There was first chose to go upon the said Edmond, a quest of gentlemen and a quest of yeomen, to enquire of the said stripe; by which inquests he was found guilty, and had judgement to loose his right

hand; whereupon was called to do the execution, first the Sergeant Chirurgeon, with his instrument appertaining to his office; the Sergeant of the Wood-yard, with the mallet and a block, whereupon the hand should lie; the Master Cooke for the King, with the knife; the Sergeant of the Larder, to set the knife right on the joynte; the Sergeant Farrier, with his searing yrons, to seare the veines; the Sergeant of the Poultry, with a cock, which cock should have his head smitten off upon the same block, and with the same knife; the Yeoman of the Chandry, with seare clothes; the Yeoman of the Scullery, with a pan of fire, to heate the yrons, a chafer of water to coole the end of the yrons, and two fourmes, for all officers to set their stuff on; the Sergeant of the Seller, with wine, ale, and beere; the Yeoman of the Ewry, in the Sergeant's stead, who was absent, with bason, ewre, and towels. Thus, every man in his office ready to do the execution, there was called forth Sir William Pickering, Knight Marshall, to bring in the said Edmond Knevet, and when he was brought to the barre, the Chief Justice declared to him his trespass, and the said Knevet confessing, humbly submitted him to the King's mercy: for this offence, he was not only judged to loose his hand, but also his body to remaine in prison, and his lands and goods at the

King's pleasure. Then the sayd Sir Edmond Knevet desired that his benigne grace would pardon him of his right hand, and take the left: 'For, (quoth he,) if my right hand be spared, I may hereafter do such good service to his grace, as shall please him to appoint.' Of this submission and request the Justice forthwith informed the King, who, of his goodness, considering the gentle heart of the said Sir Edmond, and the good report of lords and ladies, granted him pardon, that he should lose neither hand, land, nor goods, but should go free and at liberty." (*Stowe's Annals, How's Edition*, 581.)

FEES OF PHYSICIANS.

"The plaintiff, Dr. Chorley, who was a physician living at Doncaster, brought an action to recover his fees from Bolcat, the defendant, who was the executor of a man whom the Doctor had attended a considerable time, and who lived at some little distance from the town: the evidence was, that at Doncaster and its neighbourhood, there was no certain rule about fees, but the general practice was, for a physician to receive two guineas a week for his attendance. The plaintiff obtained a verdict at the last assizes at York.

"Wood, on the behalf of Bolcat, the executor,

moved the court to set aside the verdict, on the ground that no action lay for a physician's fees any more than for a barrister's.

"Cockell, (Sergeant,) and Chambre, in support of the verdict, argued, that though this point had been ruled several times at nisi prius, against such a claim, yet it had never been solemnly decided, nor was there any authority in the books for putting the claim of a physician's fee upon the same footing as that of a barrister. In the latter case, it might originally have been proper, that no temptation should be held out to countenance injustice; but in the former, it would be equally impolitic, that those who are frequently put to expense in attending patients at a distance, and who are liable to make reparations to those who may suffer from their want of skill, should not be certain of a just and honourable reward. The regulation with regard to barristers, is founded on the grounds of public policy, as appears in the passage by Tacitus, to which Mr. Justice Blackstone refers; but they are totally inapplicable to the case of physicians, and in that very passage in Tacitus, it is taken for granted, that the latter were entitled to a remuneration, because their situation was dissimilar to advocates. Besides, in this case there is an additional reason why the plaintiff should recover, as there is understood to

be a general stipulated acknowledgment for a physician's attendance at the place where this transaction arose.

"Lord Kenyon, Chief Justice. 'I remember a learned controversy, some years ago, as to what description of persons were intended by the Medici at Rome: and it seemed to be clearly established by Dr. Mead, that by those were not meant physicians, but an inferior degree amongst the professors of that art, such as answer rather to the description of surgeons amongst us. But at all events, it has been understood in this country, that the fees of a physician are honorary, and not demandable of right. And it is much more for the credit and rank of that honourable body, and, perhaps, for their benefit also, that it should be so considered. It never was yet heard of, that it was necessary to take a receipt upon such an occasion. And I much doubt whether they themselves would not altogether disclaim such a right as would place them upon a less respectable footing in society than that which they at present hold.' The judgment was therefore arrested, and Dr. Chorley gained nothing by his verdict." (4 *Durnford and East's Reports*, 317. 30 *June*, 1791.)

CASE OF THE DUKE OF MARLBOROUGH AND WILLIAM BARNARD.

On the statute of 9 Geo. I. William Barnard was tried for sending a letter, in a fictitious name, to Charles, Duke of Marlborough, demanding a genteel support for life. The charge was opened by Sergeant Davy. On the 29th of November, 1758, the following letter was found under the door of the Ordnance-Office, directed to his Grace the Duke of Marlborough:

"*November* 28.

"My Lord,

"As ceremony is an idle thing upon most occasions, more especially to persons in my state of mind, I shall proceed immediately to acquaint you with the motive and end of addressing this epistle to you, which is equally interesting to us both. You are to know, then, that my present situation in life is such, that I should prefer annihilation to a continuance in it: desperate diseases require desperate remedies; and you are the man I have pitched upon, either to make me, or to unmake yourself. As I never had the honour to live among the great, the tenor of my proposals will not be very courtly; but let that be an argument to enforce the belief of what I am now going to write. It has employed my invention, for some time, to find out a method to destroy another, without ex-

posing my own life; that I have accomplished, and defy the law. Now for the application of it. I am desperate, and must be provided for: you have it in your power, it is my business to make it your inclination, to serve me; which you must determine to comply with, by procuring me a genteel support for my life; or your own will be at a period before this sessions of parliament is over. I have more motives than one for singling you out first, upon this occasion; and I give you this fair warning, because the means I shall make use of are too fatal to be eluded by the power of physic. If you think this of any consequence, you will not fail to meet the author, on Sunday next, at ten in the morning, or on Monday, (if the weather should be rainy on Sunday) near the first tree beyond the stile in Hyde-Park, in the foot-walk to Kensington: secrecy and compliance may preserve you from a double danger of this sort; as there is a certain part of the world, where your death has more than been wished for, upon other motives. I know the world too well to trust this secret in any breast but my own. A few days determine me your friend or enemy.

"FELTON.

"You will apprehend that I mean you should be alone; and depend upon it, that a discovery of any artifice in this affair will be fatal to you:

my safety is insured by my silence; for confession only can condemn me."

Felton was the name of the assassin that stabbed the Duke of Buckingham, at Portsmouth. The Duke, not intimidated by the letter, though greatly surprised at it, and willing to find out the author, was not afraid to endeavour to apprehend him; he went alone to the spot, and at the time appointed; however, there was some attendant on his Grace at a distance, in order to observe what passed on the occasion. The Duke had been there some time on horseback, and as much undressed as a man of his quality is. He had pistols before him; he had been there some time, and saw nobody at all at that particular place. After waiting some considerable time, he was returning, and observed a person come to the particular spot, just by the tree beyond the stile in Hyde-Park, by the foot-walk to Kensington; that person held a handkerchief to his mouth, in a seeming disconsolate manner, looking into the water, and stood still a very considerable while. Upon his Grace seeing this, that the man was not pursuing any way, he had no doubt in his own mind, but that this man (be he who he would) must be the person who had sent him this letter. The man sauntering just at the place, the Duke rode up to the spot, expecting the person would speak to him: his Grace asked the

man, "Whether he wanted to speak to him?" He said, "No."—"Sir," said the Duke, "do you know me? I am the Duke of Marlborough; telling you that, perhaps you have something to say to me."—"No, my Lord."—No notice being taken, the Duke came away. A few days after, in the same week, the Duke received a second letter. This also was put under the door of the Office of Ordnance, and was also wrote in imitation of a print-hand: but the directions of both the letters were not. The second letter is in these words:

"*To his Grace the Duke of Marlborough.*

"My Lord,

"You receive this as an acknowledgment of your punctuality as to the time and place of meeting on Sunday last, though it was owing to you that it answered no purpose. The pageantry of being armed, and the ensign of your order, were useless, and too conspicuous: you needed no attendant; the place was not calculated for mischief, nor was any intended. If you walk in the west aisle of Westminster Abbey, towards eleven o'clock on Sunday next, your sagacity will point out the person, whom you will address by asking his company to take a turn or two with you. You will not fail, on inquiry, to be acquainted with the name and place of abode, according to which di-

rections you will please to send two or three hundred pound bank notes the next day by the penny-post. Exert not your curiosity too early: it is in your power to make me grateful on certain terms. I have friends who are faithful; but they do not bark before they bite.

I am, &c. &c.

"F."

The Duke accordingly went to Westminster-Abbey, to the west aisle. His Grace went to the westernmost part of the Abbey, and observed nobody lurking or standing in suspicious circumstances: after a little time, his Grace was surprised to see that the same person, whom he had seen the Sunday before exactly at the spot in Hyde Park, appeared just in this place at the west end of Westminster Abbey: but he was surprised the more, that this person did not speak to him. Waiting some time for the person to speak to him, and finding he did not, his Grace asked him, "Sir, have you any thing to say to me?" "No, my Lord."—"Have you any thing at all to say to me?" "No."—"Have you nothing at all to say to me?" "No, he had nothing to say to him." When this person came into the Abbey, another person came in with him, who seemed by his appearance to be a substantial tradesman. These two persons, after stopping and looking about at the monuments near the west gate of the Abbey,

the Duke being sure one of them was the same man he had seen before in Hyde Park, his Grace thought proper to go and stand by them, to see if that person would speak to him: seeing the Duke took no notice of him, they both went towards the choir: the stranger went into the choir, and the man that his Grace had seen in the Park, came back again (leaving his friend there) to the spot where the Duke was. The Duke then asked him, "Whether he had any thing to say to him?" "No, he had nothing at all to say to him. No, he had nothing at all to say." Then the Duke walked a little on the other side of the aisle, to see whether the man would follow him, or had a mind to speak to him at another spot. He observed the man looked eagerly at him: may be he expected the Duke's "sagacity would point out the man:" however, the Duke did not do what the letter required, that is, "Ask him to take a turn with him." At this second time, there was somebody that was with the Duke, near enough to take notice what passed, in order to apprehend the person, so as to put it beyond all doubt, that he was the author of those letters. The Duke, and this attendant of his, went out at the west door of the Abbey, in order to go to his coach. As soon as the Duke went out of the Abbey, that man, whom the Duke had seen at both these places, watched the Duke out of the Abbey, and

as soon as his Grace had passed the door of the Abbey, he went up, hid himself in a corner, concealed from a possibility of being seen by his Grace in case he had looked back, and so watched him into his coach.

A few days after this, came a third letter to the Duke, wrapped in a very small compass, and directed to his Grace the Duke of Marlborough, at his house. "My Lord, I am fully convinced you had a companion on Sunday. I interpret it as owing to the weakness of human nature; but such proceeding is far from being ingenuous, and may produce bad effects, whilst it is impossible to answer the end proposed. You will see me again soon, as it were by accident, and may easily find where I go to; in consequence of which, by being sent to, I shall wait on your Grace, but expect to be quite alone, and converse in whispers. You will likewise give your honour, upon meeting, that no part of the conversation shall transpire. These and the former terms complied with, insure your safety; my revenge, in case of non-compliance, (or any scheme to expose me,) will be slower, but not less sure, and strong suspicion the utmost that can possibly ensue upon it; while the chances will be tenfold against you. You will possibly be in doubt after the meeting, but it is quite necessary the outside should be a mask of the in. The family of the BLOODS is not extinct, though

they are not in my scheme." The word BLOODS is in capital letters. As Felton was the villain who assassinated the Duke of Buckingham, so this is the name of the fellow who seized the Duke of Ormond, and was going to carry him to Tyburn to execute him, and also who stole the crown out of the Tower of London.

The Duke waited, expecting to hear farther; but heard nothing more until the middle of April. About the 14th there came a letter to his Grace, wrote in a mean hand, but not in imitation of a print-hand, as the others were. These are the words of the fourth letter:

"*To his Grace the Duke of Marlborough.*

"MAY IT PLEASE YOUR GRACE,

"I have reason to believe, that the son of one Barnard, a surveyor in Abingdon-Buildings, Westminster, is acquainted with some secrets that nearly concern your safety; his father is now out of town, which will give you an opportunity of questioning him more privately. It would be useless to your Grace, as well as dangerous to me, to appear more publicly in this affair.

"Your sincere friend,

"ANONYMOUS.

"He frequently goes to Storey's-Gate Coffee-house."

The Duke sent for Mr. Barnard, the son of Mr.

Barnard, according to the directions in that letter. The Duke, when Mr. Barnard came, was sitting in his room; and though the door of the outer room was at threescore yards distance from where the Duke was, yet, the moment Mr. Barnard entered the room, he was sure that was the man he had seen both in the Park and in the Abbey.

The Duke of Marlborough was sworn, and proved the receipt of the several letters as stated by Sergeant Davy, and the circumstances of his going to the Park, the Abbey, &c. His evidence respecting their meeting, in consequence of the message which the Duke sent him, was as follows:

"When he came in (says the Duke) I knew, at first sight, it was the same person that I had seen in the Park and in the Abbey. I desired him to walk with me into a room, and immediately shut the door when we were in. I asked him as before; he said, "He had nothing to say to me;" then I told him of the last letter I received, that it mentioned his name, and that he knew something concerning my safety; he said, "he knew nothing of it." Then I recapitulated all the letters, beginning with the first, and remarked to him that it was strange to me, that a man that wrote so very correct, without false English in any shape, should be guilty of so low an action; he said, "A man may be very learned and very poor." I then took

notice of the second letter, and said, there must be something very odd in the man; he said, "I imagine the man must be mad:" I said, he seems surprised that I should have pistols; said he, "I was surprised to see your Grace with pistols, and your star on." I said, "Why was you surprised at that?" His answer was, after stopping a moment, "It was so cold a day; I wondered you had not a great coat on:" then I afterwards shewed him the letter again where his name was mentioned, and walked with him to the window; and as I read it, when I came to that part where it said his father was out of town, he said, "It is very odd, my father was then out of town." I said nothing to him of that, though it struck me a good deal, as there was no date to the letter. I said, if you are innocent, it behoves you much more than me to find out the author of those letters, particularly the last; for it was an attempt to blast his character behind his back; he seemed to give me a smile, and away he went. I did not apprehend him then."

The Duke was cross-examined, as follows, by the prisoner's Counsel.

Q. In consequence of the first letter, your Grace went into the Park on horseback, and was there some time without seeing any body you suspected; were there not people there

D. of Marlb. I saw several people on horseback, and some few walking in a hurry on foot.

Q. Pray, my Lord Duke, after you had seen this person loitering, was there any thing going forward, such as hunting a duck, or the like?

D. of Marlb. No, nothing in the world as I saw; it was a very cold day.

Q. Your Lordship said there was another person at a distance, an attendant on your Grace; how far might that person be off when you was speaking to the prisoner?

D. of Marlb. I cannot tell exactly. I had spoke to him to keep a great way off.

Q. Was he in view of your Grace?

D. of Marlb. I dare say he was.

Q. Might not any person equally see that person as well as your Grace?

D. of Marlb. I suppose he might.

Q. Was your Grace there at the time?

D. of Marlb. I was there rather before the time, I believe.

Q. Did he in the least offer to follow your Grace?

D. of Marlb. No, he seemed to go the other way.

Q. With respect to the second letter, your Grace went according to appointment to Westminster Abbey, and saw the prisoner and another person come into the Abbey; before that other

person had left him, had your Grace been near him?

D. of Marlb. I had; I stood by him in hopes he would speak to me, if he was the person that wrote the letters.

Q. Whether the circumstance was not such, that that other person might very well believe your Grace wanted to speak to the prisoner?

D. of Marlb. That I cannot tell. I stood very near the prisoner, wanting him to speak to me. It is possible he might think so.

Q. Whether there were not at that time several persons attending on your Grace?

D. of Marlb. There were two or three.

Q. Did your Grace speak to either of them in the Abbey?

D. of Marlb. No, I did not.

Q. Whether if there was any other in Westminster Abbey at that time, whether that third person might not have taken Mr. Barnard for your Grace's companion, as your Grace spoke to him?

D. of Marlb. Upon my word I cannot tell that.

Q. Could there be a person to whom that expression, in the third letter, might be applied, referring to your Grace's companion, besides Mr. Barnard?

D. of Marlb. Yes, it might be applied to a

gentleman that went away with me in the coach from the Abbey.

Q. Whether your Grace did not bow several times to the prisoner before you spoke?

D. of Marlb. No, I don't think I did.

Counsel. With respect to the third letter, your Grace heard no more of that till the fourth came?

D. of Marlb. I did not; and when the fourth came, I sent to Mr. Barnard.

Q. Did your Grace know Mr. Barnard before you received these letters?

D. of Marlb. No. I did not at all.

Q. Does your Grace know now whether he was a person in such situation in life, as answered to the description in the letters?

D. of Marlb. I don't know the least thing of him, either character or circumstances.

Q. Then, abstracted from these circumstances, should your Grace have entertained any suspicion of him more than of any other person?

D. of Marlb. I did not know there was such a man in the world.

Q. When he came to your Grace's house, did he come in very readily?

D. of Marlb. He did.

Q. Whether his answer was, I was surprised to see you armed too, or I was surprised to see you armed?

D. of Marlb. I cannot take upon me to say whether he laid such an emphasis on it or not.

Q. Then he made no secret of seeing your Grace in the Park?

D. of Marlb. No.

Q. Nor in the Abbey?

D. of Marlb. No.

Q. Your Grace mentioned, he said, It is very odd, my father was out of town then! Could your Grace apply that, in the manner it was spoke, that his father was out of town when the message came to him?

D. of Marlb. I really understood him, that he knew his father was out of town at the time of his writing the letter.

Q. Did your Grace mention the time you received it?

D. of Marlb. No, I did not mention any time.

Q. Did he come punctually to his time?

D. of Marlb. He did; I think the messenger said he would wait on me about half an hour after ten.

Q. In what manner was he apprehended?

D. of Marlb. I do not know; I understand he was summoned.

Q. It has been said, he went away with a smile; pray, my Lord Duke, might not that smile express the consciousness of his innocence as well as any thing else?

D. of Marlb. I shall leave that to the Great Judge.

Q. He said, A man might be very learned, and very poor; does your Grace know whether this person at the bar is either learned or poor?

D. of Marlb. I do not know, indeed.

Q. May not that expression fall from any man whatever?

D. of Marlb. I cannot say as to that.

Further evidence was then called, which was to the following purpose, That when the prisoner received the message from the Duke, he expressed some surprise, but no fear; that he spoke of having seen the Duke in the Park and in the Abbey, but that he did not know the Duke in the Park until he told him who he was; and that in Westminster Abbey he thought the Duke had spoke to him, but he was mistaken; he also said that he had some thought that the Duke intended to give him a place.

The prisoner being called on for his defence, said, I am entirely innocent of this affair with which I am charged; I leave it to the Court and the Jury, with the evidence that will be produced. The prisoner's witnesses were called.

John Barnard, his father, proved that the prisoner was much employed in business, and in receiving great sums of money; that his accounts always stood right, that he is a sober man; that

he told him of the Duke of Marlborough's taking notice of him as a very extraordinary thing; that he perceived the duke was armed in the Park, and thought there might be a duel going forwards, that the prisoner often and without reserve talked of this as a very strange event—that he also mentioned his meeting him in the Abbey in the same terms—that on Sunday (the first meeting) he himself had sent his son to Kensington on business.

The prisoner's uncle and cousin proved circumstances of a similar nature. Various other evidence was called which is stated and commented on in Mr. Sergeant Davy's reply.

My Lord, and Gentlemen of the Jury,

I shall consider two general questions: the first is, Whether the several circumstances that have been given in evidence, on the part of the prosecution, independently, are in themselves sufficient to convince a reasonable understanding of the prisoner's guilt; I mean, your understandings as jurymen. The second question is, Whether the defence that has been set up, these circumstances are sufficient to repel the weight of the evidence; I mean, whether the defence is reconcilable to the suspicions of the prisoner's guilt; for if they are irreconcilable with the prisoner's guilt, (as I do not intend to impeach the credit of any one witness,) I am content, upon that supposition, he

may be acquitted: I do not mean, that any witness has laid a single circumstance before you that is not strictly true, but that they may be reconcilable with the suspicion of his guilt.

It will remain for your consideration, it is now the capital question, Whether these circumstances laid before you, consisting of five or six parts on the part of the prisoner, may be reconciled with the suspicion of his guilt? Because, if they may, it is no defence at all.

Gentlemen, the first is, the prisoner being sent by his father to Kensington on this Sunday on which he met the Duke in Hyde Park. I did not chuse by any means to ask the father any question; I should have disobliged my noble client if I had done it. As, why he was sent to Kensington? What conversation might have led to that matter? What happened at breakfast with his father was the sole occasion of his going there. The son, you see, is principally concerned in conducting his father's business; he might, or he might not, propose the expediency of such a journey. It is a little extraordinary, this business (not being urgent in its own nature) should be appointed by the father to be transacted on Sunday, when the father might as well have employed his time in going elsewhere: going to ask whether a sum of money had been paid on the account of gravel, to make it necessary to be sent just at church-time.

His father talked of his going; he did go—What does that prove? Does it prove he was not to go to Hyde Park any other way? Whoever was the writer of these letters, certainly intended to have a meeting on both the Sundays, in the Park and in the Abbey, in a very public manner; and that, agreeable to the tenor of the letter, he did provide himself with a defence in case of need. Now, be the author of these letters who he may, the author did contrive a subterfuge for himself afterwards, in order to reply to a charge of that nature.

Gentlemen, the next part of the defence is, that he at several times and to several people related the meetings he had had with the Duke, and the extraordinary occurrences. This indeed corresponds with the observations I made: the writer of these letters proposed to meet the Duke at a time that people were walking out on a Sunday, and in the Abbey, the most public places, and at the most public times: is that irreconcilable with the suspicion that the prisoner (if he was the author of these letters) might have been contriving with other persons, telling people of the several meetings he had had with the Duke, and the substance of those meetings? But one observation will arise, perhaps not so much to his service; and that is, when he told those people of his seeing the Duke, he spoke to his seeing an attendant,

which corresponds with the second letter. What does he say about it to the persons to whom he relates the meeting? He saw he was armed—He saw one likewise at a distance, and he thought there was a duel going forwards. Now, when he spoke to the Duke of the surprise he had entertained on seeing the Duke armed, does he assign that as a reason of apprehending a duel? No; it was because it was cold weather, and he wondered to see him without a great coat: so that the same man that speaks of it to his friends as a circumstance that might induce a surprise, speaks of it at another time as being surprised, without giving that as a reason for it.

The next circumstance is, Mr Greenwood's evidence of going with him to Westminster Abbey. There are two or three things a little particular: after breakfast, about nine o'clock, he solicits the prisoner to dress himself in order to go to the Park. The prisoner seemed unwilling to go there. He said, it was not an unusual thing, when they were to go together, for them to differ, and upon that occasion to part. Supposing the prisoner wanted to get rid of this companion of his, who had laid there and was not easily to be got rid of, why might not that account for his being unwilling to dress himself at nine in the morning, in order to get rid of him? For he had time enough to dress himself an hour after that, and

to meet the Duke in the Abbey at eleven. It is a little odd, that the prisoner wanted to go another way, and expressed a reluctancy in going through the Abbey. It is clear he did not mean to be seen by Mr. Greenwood in the Abbey: but when he could not get rid of that, and he plucked him by the coat for that purpose, did they prosecute their design in going to the Park, and yet saunter a good while in the Abbey? (No reason why they did so.) First they went to General Hargrave's monument, then to Captain Cornwall's monument; there they staid some time, the Duke's behaviour being in Mr. Greenwood's evidence particular; from the Duke's bowing, he thought that the Duke wanted to speak to him in private. How is this reconcilable? There is not a circumstance in all that part of Mr. Greenwood's evidence, which suits so well as this of his guilt: first he wanted to get rid of Mr. Greenwood, and when he could not do that, then making no secret of having seen the Duke, and make that tally with his telling him he had met him.

The next circumstance is Mr. Ball's; and if that circumstance of his evidence strikes you as it did me, I wonder he was produced as a witness: for, you see, the prisoner was very forward: he was blamed for it by one of his witnesses; he thought he talked too much of having met the Duke; that was so singular, that it demanded

animadversions: yet, notwithstanding, when he had had a third interview with the Duke, and there appeared so very material a circumstance of the Duke's having charged him with a very extraordinary and wicked proceeding against him; when he had told him of all these letters, and one of them set forth his name, as a person that could inform his Grace of something which nearly related to his safety, and hinted to him the strangeness of these letters, and charged them upon him; and after having pretended a total ignorance of this matter, he afterwards conceals all this from Mr. Ball: and what is another circumstance, Mr. Ball says, he was rather more cheerful in relating what he did than usual. God knows he had no reason to be cheerful; for the Duke had charged him home with a capital offence; the Duke had admonished him, and told him, either he was the author of these letters, or he was used exceedingly ill by the person that did write them. Yet, you see, in mentioning these things to his friend Mr. Ball, Ball considers it as a fruit of the Duke's benevolence to him, and says, he will give you a post in the army. The prisoner replied, It must be a very good one, if I accept it.

These are all the circumstances that they have insisted upon as proofs of his innocence, except one, that is his character. They have called to

that many witnesses; they say he is very expert in his business, a very diligent, sober, man; nothing about him as marks of distress: no vices to which they find him inclined, which give him an occasion for a demand of this kind; and that, upon the whole, he has passed as a very honest man.

Gentlemen, when you come to consider that, character goes but a very little, and indeed no way at all, towards proving his innocence.

In the first place, character can only be of service to a man, where his case hangs, as it were, in equal scales, and it is doubtful whether innocent or guilty; there it is that a good character stands in some stead, and will balance the scale in his favour. But this is that sort of a case, that this particular character they have given of him will have no weight to repel those several suspicious circumstances that tally so exactly as to his guilt. Might it not happen, that a man betwixt twenty and thirty years of age, dependent in some measure on his father, might have a secret call for money, which he would wish his father, and those friends that are fond of lending him money, not to be acquainted with? We know very well, there are certain circumstances, some in this capital city of London, where a man might be very hard driven for the want of money, which he would chuse to hide from his friends.

I know nothing of the prisoner's particular

character; but it is enough for this purpose, that it possibly may be his case: if so, what then has the present character to do with it? If the circumstances of the outlines are such, can any doubt about believing he is guilty or not? Then all those other circumstances will have no weight at all to counterpoise the weight of the former.

As I said at first, if upon any circumstances offered on the part of the prisoner, if the weight of evidence on the part of the prosecution is sufficient to charge him, there is nothing in the defence that will lessen it at all.

Gentlemen, he is safe in your hands. I doubt not but that you will do your duty: if you think him guilty you will find him so; if not, you will acquit him. With regard to the Duke, his Grace has discharged his duty which he owed to the public, which he will at all times do, and is perfectly indifferent about the issue of it.

The jury acquitted the prisoner. (*State Trials, vol.* xix. *p.* 815.)

HORNE TOOKE AND THE LAW.

No one ever made such strenuous but unsuccessful endeavours to become a lawyer as Horne Tooke. We have already given some account of the failure of his application to be called to the bar, (*see vol.* i. *p.* 59,) and we shall now give a slight sketch of his legal education. To the pro-

fession of the law his father had always expressed himself averse. However, at the age of twenty, and during his residence at the University, he became a member of the Society of the Inner Temple, and proceeded to qualify himself for the bar. This course, it is said, he was induced to take, at the persuasion of Mr. W. Tooke, who had made him most ample promises, all which he most faithfully intended to keep, but was deterred by his avarice. He became acquainted, at this period, with several men who afterwards acquired great celebrity, of whom the following account is given by his biographer. (*See Stephens's Life of Tooke, vol.* i. *p.* 30.)

"Our young lawyer, for so he may now be termed, partook of commons regularly, during term time; or, in other words, sat down to his beef or mutton daily, in the hall of his inn of court, with a view of enabling him, in his own phrase, 'to eat his way to the bar.' At this period, he got acquainted with two singular men, each famous in this profession, and with both of whom he was connected in future life: for the one became his defender, and the other his judge.

"John Dunning, afterwards Lord Ashburton, a native of Devonshire, and the son of an obscure tradesman, was about four years older than himself. Being destitute of patrimony, he repaired to the metropolis, with a view of courting the smiles

of the fickle goddess; and at length completely succeeded in his views. Notwithstanding his person was unpropitious, and there was a certain huskiness in his speech, yet he became the most successful practitioner of his day. He was the only barrister in the Court of King's Bench capable of arguing a constitutional question with the able and eloquent Chief Justice who then presided there; and, on more than one occasion, the Earl of Mansfield himself was obliged to yield to the superior force of his arguments. This celebrated pleader was at length brought into parliament, under the auspices of Lord Shelburne; and, after distinguishing himself in the House of Commons on many trying occasions, finally obtained a peerage, together with the Chancellorship of the Duchy of Lancaster.

"Lord Kenyon was a native of Wales, who, after being brought up at the desk of an attorney, practised in Chancery with considerable reputation. It was late in life before he attained the dignities of his profession; and he, who from habits and custom, and congeniality of studies, was enabled to become a most excellent Master of the Rolls, occasionally found his seat uneasy as Chief Justice of the King's Bench, in consequence of being unacquainted with the practice of the common law.

"These three, while students, and little dream-

ing as yet of their future fortunes, were accustomed to spend much of their time together. Two of them, as has been hinted, afterwards attained patrician honours; but, at the period now alluded to, the prospects of the third were to the full as promising as those of either of his fellow-students. He, indeed, must have been looked up to as a superior character: for, in addition to his natural talents, he had been educated at two public schools, and finished his studies at a celebrated university; while they were brought up at little provincial seminaries, and could not boast of any classical attainments whatever.

"It would appear, however, that none of the parties were very rich at this period, for they lived with a degree of frugality, that will be deemed rather singular, when contrasted with their fortune, wealth, and celebrity. I have been repeatedly assured, by Mr. Horne Tooke, that they were accustomed to dine together, during the vacation, at a little eating-house, in the neighbourhood of Chancery Lane, for the sum of seven-pence halfpenny each! 'As to Dunning and myself,' added he, 'we were generous, for we gave the girl who waited upon us, a penny apiece; but Kenyon, who always knew the value of money, sometimes rewarded her with a halfpenny, and sometimes with a promise!'

"It would appear, however, that the partiality of Mr. Horne for the bar was not to be gratified,

His family, who had never sanctioned this attachment, deemed the church far more eligible as a profession, and he was at length obliged to yield, notwithstanding his reluctance, to the admonitions, the entreaties, and the persuasions of his parents. It seems not at all improbable, that a friendly compromise took place on this occasion; and that an assurance was given of some permanent provision, in case he consented to relinquish his legal pursuits."

The aversion which his family evinced to the profession which he had chosen, induced young Horne to abandon it; and accordingly, in the year 1760, he was ordained a priest of the Church of England, a character which he sustained for upwards of twelve years. The political controversies in which, during this period, he had become embroiled, awakened that love of a public life which the profession of the law is so well calculated to gratify; and his father and mother being now dead, Mr. Horne resolved to resign his gown and resume his legal studies. His circumstances at this time being narrow, four of his friends, (of whom Mr. Sawbridge and Mr. Townsend were two,) generously secured him, by their bonds, the sum of four hundred a year, until he should be called to the bar, though he, in fact, never called for any portion of that money.

"Horne, now at the age of thirty-seven, began,

in good earnest, to qualify himself for the law, and attained an intimate acquaintance with the labours of some of the greatest English lawyers, amongst whom, he most valued Lord Chief Justice Coke. He had already qualified himself for the bar, when the contest with the American Colonies involved him once more in politics; and, in consequence of his having signed his name to an advertisement issued by the Constitutional Society, in which it was stated, that the Americans had been murdered by the King's troops, Mr. Horne, who was then peaceably eating his commons in the Hall of the Inner Temple, and imagined that his misdeeds had by this time been forgotten, suddenly found himself within the iron grasp of the Attorney General.

"This office was then occupied by a singular character, Edward, soon after ennobled by the title of Lord Thurlow. Although negligent of his studies during his youth, yet he was fortunate enough to acquire the reputation of considerable talents. Allured at length from indolence, by the siren voice of ambition, he suddenly attained professional and parliamentary eloquence, and his talents, proving fully commensurate with his station, soon justified all the hopes that had been formed of him.—Bold, stern, inflexible, his sombre countenance was generally clothed in terrors.—His look was calculated to appal the guilty, while

from his bushy eye-brows, he seemed to scowl dismay even on innocence.—Yet, underneath this forbidding guise, he is said to have occasionally entertained sentiments of compassion; to have discerned and respected genius, and to have sometimes rescued obscure merit from the pressure of poverty and contempt. He was at this moment placed on a professional eminence, whence he already discerned the seals, the ermined robe of authority, and the future honours that awaited him.

"Become at length Chancellor, he seemed to be clothed with powers rather than with dignity; but in that character he is still remembered for the determined stand made in behalf of a King, while visited by the severest of all human afflictions; and the spirited assertion of the merits of his own order, in opposition to the spurious pretences of an equivocal ancestry, half royal and half meretricious. (*See Ante, vol.* i. *p.* 42.)

"Yet, on the other hand, he never distinguished himself, either as a great lawyer or a great statesman. In the former capacity, he has not left any professional work, by which his name will be known hereafter; and, in respect to the latter, it can never be said of him, as of one of his predecessors, that he was the author of a bill, every line of which was worth a subsidy; nor can it be affirmed, in the language applied to another, that he dispensed blessings by his life, and planned them for posterity.

" The judge who presided at Mr. Horne's trial, was William Murray, Earl of Mansfield. This nobleman was now in the decline of life, for more than sixty winters had shed their snows upon his head; but the roses and lilies had not yet forsook his cheeks, and the lustre of his complexion was augmented by means of eyes that seemed to sparkle with genius. His person, if somewhat below the exact standard of beauty, was yet exquisitely formed; his motions were graceful, his dress neat, becoming, and appropriate. He also possessed a voice replete with music in all its various modulations, and was environed with a certain appearance of dignity, that struck all beholders with awe and veneration.

" Born in Scotland, and educated at Oxford, he was indebted to a variety of fortunate circumstances for his rise, and to the munificent friendship of an English nobleman,* for the means of pursuing and adorning his profession.

" Certain incidental circumstances, early in life, led to attachments of an equivocal and dangerous kind: an elder branch of the family† acted as the

* Lord Foley.

† Mr. Murray, of *Broughton*, the *titular* Lord Dunbar, whose talents are said to have been superior to those of the Earl of Mansfield. He is reported to have retained his estates, by making certain disclosures some time after the suppression of the rebellion.

confidential secretary of the grandson of James II. and he himself was accused, in full parliament, by a peer* of the realm, of having drunk success to the Pretender on his bare knees.

"Praised and flattered by one of the greatest poets of the age,† he was ushered into the world under the most auspicious circumstances; while an alliance with a powerful family,‡ gave him all that remained wanting to complete his career,—influence, opportunity, and connexions. Accordingly, his rise was rapid, so that, having early in life attained the highest honours of his profession, he soon became the patron of those to whom he had been originally a client.

"As a judge, his singular abilities, his almost unbounded knowledge, his sudden and seemingly intuitive anticipations, added a kind of prescience to his character, that astonished all beholders, rendered him conspicuously eminent, and distinguished him from every great magistrate of that day. On the other hand, those very qualities, which constituted his chief excellence, were not unaccompanied with others of a different kind; and even seemed necessarily to arise out of them. His talent for discernment, occasionally rendered him too quick in his conclusions; that genius, which at one time enabled him to unravel error

* Lord Ravensworth. † Pope.
‡ That of the Earl of Winchelsea.

and detect falsehood, at another made him rather hasty in his decisions; while a certain peremptory manner, acquired by the ascendancy of his character, seemed to constitute him a dictator on that bench where he ought only to have exercised a limited and concurrent jurisdiction.

"The Lord Chief Justice was accused of leaning towards those in authority. It was not a Horne and a Junius alone, who propagated these opinions:—Sir John Willes, who afterwards presided in the Court of Common Pleas, many years before, branded him as a Tory, a Jacobite, and a stickler for arbitrary power. Mr. Justice Yates, one of the ablest and most incorruptible men of that day, not only dissented from his notions of law, but voluntarily left the Court of King's Bench on that very account."

Mr. Horne was tried on the 4th of July, 1777, and, after a very able defence, the jury found a verdict of 'guilty.' In November, the defendant offered various reasons in arrest of judgment, which were over-ruled, and he was sentenced to pay a fine of 200l. and be imprisoned for the space of twelve months.

In 1779, on applying to be called to the bar, he was rejected by the Benchers, in the manner before related. (*See vol.* i. *p.* 59.) This was a heavy disappointment, as several attorneys had voluntarily promised him briefs, and he was considered

by that branch of the profession to be eminently qualified to do justice to their clients. His prospects are said to have created a mean jealousy on the part of some practising lawyers; but the chief opposition arose from another quarter.—His politics were hostile to those in power; and Lord Mansfield, it is asserted, looked with great alarm upon his appearance in court in the character of a counsel. The objection taken to his eligibility was, that *he was still a clergyman.*

"To comprehend Mr. Horne's situation, it may be necessary to recur to an early portion of our history, and thus exhibit the question of *eligibility*, in its various bearings and relations. In former times the clergy engrossed nearly all the learning in the nation, and were accordingly far better qualified than the laity for both ecclesiastical and legal pursuits. The bishop, indeed, presided, in conjunction with the *comes*, or earl, in the county court, and thus, besides taking care of the interests of his own order, conferred additional dignity and skill on the decisions of that tribunal. The inferior clergy, at the same time, appear to have practised with great success in the municipal tribunals; and as theology had sharpened their wits, and education enlarged their understandings, it is not at all surprising to find that clients should be eager to engage their services,

and flock to them in preference to men less qualified for forensic business.

"The fortunate, or, perhaps, *unfortunate*, discovery of the Roman code, at Amalfi, in Italy, produced a great change in the institutions of almost every country in Europe. The dignified clergy of that day immediately perceived how advantageous the adoption of the regulations of Justinian would prove to them; and the Popes, who then pretended to dispose of the thrones of the Cæsars, were eager to support the arbitrary edicts of emperors, who, like themselves, affected to think that both their persons and their rescripts were inviolable.

"The neighbouring countries cheerfully submitted to the change, and thus engrafted slavery and the civil law on that even-handed gothic jurisprudence which had insured freedom to all the Northern nations.

"But the sturdy spirit of the English Barons would not permit them to submit, and, during the reign of King Stephen, many severe, but salutary, statutes, were passed against these sinistrous innovations. On this, the reigning pontiff, perceiving that it would be a work of time to subdue the contumacy of a bold and haughty aristocracy, in order to throw discredit on their municipal institutions, inhibited the bishops from assisting in the county courts, and the clergy from practising any

where but before an ecclesiastical tribunal. The prelates obeyed; but the inferior members of the priesthood could not be so easily induced to relinquish the advantages of a lucrative profession. They accordingly repaired to the common law courts in disguise; for, to avoid giving scandal by their contumacy, they concealed the ecclesiastical tonsure which designated their order, by means of a black patch, or coif, which is still placed on the back of their wigs at the present day, by all who have attained the dignity of a sergeant. Thus, many of the clergy still continued for ages to practise as before; and they have never been since prohibited by statute."

The refusal to admit him to his gown, terminated all Mr. Horne's prospects, and contributed to sour and embitter the remainder of his life. On a future occasion he alluded to the conduct of the Benchers of the Inner Temple, who, "having first enticed me to quit one profession," says he, "after many years of expectation, very handsomely supplied its place to me by the negation of the other."

In 1782 Mr. Horne assumed the additional surname of Tooke, at the request, as it was understood, of a gentleman of that name, whose property, it was generally supposed, would devolve upon him. At the commencement of the French Revolution, he took a very active part in the politics of the day, and attended the meetings of

the Constitutional Society. He became, in consequence, one of the chief objects of the prosecutions for high treason, in 1794. On Monday, the 17th of October, in that year, Mr. Tooke was put to the bar. During the whole of that long and singular trial, he conducted himself with exactly the same ease as if he had been employed as counsel for an indifferent person; and both in the examination in chief and cross-examination, contrived his questions in so able and artful a manner, as to conceal their drift, not only from the witness, but even from the bench and the bar. During the whole trial, which continued by adjournment for the space of six days, neither his spirits nor his resolution forsook him for a moment. His usual good-humour discovered itself, by frequent sallies. One cold night, on retiring from the Old Bailey to Newgate, a lady advancing towards him, pulled up the collar of his coat, and at the same time put a silk-handkerchief round his neck; while employed thus, he observed, "Pray, Madam, be careful, for I am rather ticklish at present about that particular place." After a consideration of only eight minutes, the jury returned a verdict of Not Guilty.

Mr. Beaufoy having asserted, "that he knew nothing of Mr. Tooke," the latter was extremely indignant, and contrived to mortify Mr. Beaufoy severely, by asking him, in the witness-box,—"If

he had not complained to him, that Mr. Pitt, after all his services, would scarcely return his bow?" This question was peculiarly offensive to Mr. Beaufoy, and was said to have occasioned his death, which happened soon after.

After the celebrated examination of Mr. Pitt, on the same occasion, it was observed by Mr. Tooke's nephew, on their return from court, "that he had got Pitt down, and might have done more with him." "Yes, I might, John," was the reply, "but never in my life did I choose to trample on a fallen foe."

We subjoin the opinions expressed by Mr. Horne on several points connected with the law. Imprisonment for debt, he observed, was first introduced in favour of the Barons, "to enable them to bring their stewards *to book*. Arrest on *mesne* process, or previously to trial, on the simple oath of the plaintiff, originated in a mere fiction of the law, and was an assumed power on the part of the courts of justice. The frequent acts of insolvency all tend to prove that this is an impolitic and injudicious contrivance; but it is no less strange than true, that all the great law lords, with one only exception, constantly "bristled up" whenever the Earl of Moira, with his usual goodness and humanity, proposed a general statute for the relief of Insolvents. As for the present system, it was culpably and flagitiously wrong, being

calculated to give a legal form to fraud; and to confine the means of oppression to the rich, the profligate, and the unjust. In fine, it operated as an illusory satisfaction to the injured, contributed to the ruin of innocence, as well as the triumph of guilt, and was essentially beneficial to none but marshals, turnkeys, and attorneys."

Of "Blackstone's Commentaries," he was accustomed to say, "that it was a good gentleman's law book, clear, but not deep. He did not approve of Sir William's definitions, and observed, that his explanations of law, as 'a rule of conduct,' meant no more than if he had said, 'that law was law.' I well recollect his animadversions on the change of public opinion respecting the Vinerian Professor, whence he inferred something very like degeneracy on the part of the nation: for he observed, 'that when the Commentaries first made their appearance, they were esteemed so little friendly to freedom as to be quoted on the side of power; but he had lived long enough to find them cited on the side of liberty!'"

On the name of Bacon being mentioned, Mr. Tooke advocated the cause of this celebrated chancellor. "His judgments in his own court," he observed, "were always dictated by equity, and never once complained of. The accusations against him were minute, frivolous, and vexatious; while his sentence, 'to be rendered for ever incapable of

any place or employment, to be precluded from sitting in parliament, or coming within the verge of the court, to be fined forty thousand pounds, and remain a prisoner in the Tower during the King's pleasure,' was incommensurate with, and far exceeded his supposed offences. The sums stated to be received, not by him, but by his servants, were presents under the name of *fees;* and the judges and chancellor at this moment, took perquisites, under the name of fees also.

"Formerly, indeed, they were on a different footing; justice is much more pure now between party and party than heretofore; for at Christmas and Easter, certain customary *compliments* were regularly paid. The same prevailed in the French courts of justice before the Revolution; for there the *rapporteur,* who drew up a summary of the cause, was *spiced,* and it was not uncustomary to send a handsome woman with a nosegay, a thing become so common at length, that a name was affixed to it, which proved its frequency, such a lady being denominated a *solliciteuse,* or female solicitor. He believed the truth was, that all the judges in France considered themselves entitled to *épices* before judgment; whereas in England, sums were exacted by the officers of the chancellor, in his name, for seals, &c. after it." (*See Ante, vol.* i. *p.* 239.)

He observed, "that upon looking narrowly

into this business, you will find, that his sentence was never executed,—that he was afterwards summoned to parliament,—that he was chastened, as may be seen by his latter writings, by adversity, and that the whole charge must be allowed to have been of a very equivocal nature, for it originated in a court intrigue, during bad times."

A FROLIC OF LORD THURLOW'S.

"Returning, by way of frolic, very late at night, on horseback, to Wimbledon, from Addiscombe, the seat of Mr. Jenkinson, near Croydon, where the party had dined, Lord Thurlow, then Chancellor, Pitt, and Dundas, found the turnpike-gate, situate between Tooting and Streatham, thrown open. Being elevated above their usual prudence, and having no servant near them, they passed through the gate at a brisk pace, without stopping to pay the toll; regardless of the remonstrances or threats of the turnpike-man, who running after them, and believing them to belong to some highwaymen, who had recently committed some depredations on that road, discharged the contents of his blunderbuss at their backs. Happily he did no injury." (*Wraxall's Memoirs of his Own Times, vol.* ii. *p.* 473.)

MR. JUSTICE TWISDEN'S FALL.

The following anecdote of this learned Judge,

whose name is familiar to the diligent student of Saunders's Reports, is related by Roger North, in his *Examen*. North is speaking of the elevation of Lord Shaftesbury to the Woolsack.

"His Lordship had an early fancy, or rather freak, the first day of term, (when all the officers of the law, King's Counsel, and Judges, used to wait upon the Great Seal to Westminster Hall,) to make this procession on horseback, as in old time the way was, when coaches were not so rife. And accordingly, the Judges, &c. were spoken to, to get horses, as they and all the rest did, by borrowing and hiring, and so equipped themselves with black foot-clothes in the best manner they could. And divers of the nobility, as usual in compliment and honour to the new Lord Chancellor, attended also in their equipments. Upon notice in town of this cavalcade, all the show company took their places at windows and balconies, with the foot-guard in the streets, to partake of the fine sight, and being once settled for the march, it moved, as the design was, statelily along. But when they came to straights and interruptions, *for want of gravity in the beasts, and too much in the riders*, there happened some curvetting, which made no little disorder. Judge Twisden, to his great affright, and the consternation of his grave brethren, was laid along in the dirt. But all at length arrived safe, without the loss of life or

limb in the service. This accident was enough to divert the like frolic for the future, and the very next term after, they fell to their coaches, as before. I do not mention this as any way evil in itself, but only as a levity and an ill-judged action, for so it appeared to be, in respect to the perpetual flux of solemn customs and forms, that will happen in the succession of ages, not reducible back to antiquity, nor needing so to be, which makes usages that are most fitting in one time, appear ridiculous in another. As here the setting grave men, used only to coaches, upon the menage on horseback, only for the vanity of shew, to make men wonder, and children sport, with hazard to most, mischief to some, and terror to all, was very impertinent, and must end as it did, *en ridicule.*" (*Examen, p.* 59.)

Roger North proceeds to give an account of Lord Shaftesbury's judicial conduct, not very favourable to his Lordship's character. As a proof of "his little regard to decency and morality," he states, "that he did not concern himself to use a decent habit, as became a Judge of his station. For he sat upon the bench in an ash-coloured gown, silver laced, and full-ribboned pantaloons, displayed without any black at all in his garb, unless it were his hat, which now I cannot say positively, though I saw him, was so." (*Examen, p.* 60.) By other writers, Lord Shaftesbury's

judicial merits have been differently represented. "With what prudence, candour, honour, and integrity, he acquitted himself in that weighty employment, the transactions of the Court of Chancery, during his Chancellorship, will best testify." (*Rawleigh Redivivus, p.* 53.)

DUNNING AND WALLACE.

Both these celebrated lawyers died in the autumn of 1783. The following anecdote is related of them by Sir Nathaniel Wraxall: "I have been assured, that a short time before Lord Ashburton's decease, these two distinguished lawyers, finding themselves by accident in the same inn at Bagshot, the one on his way down into Devonshire, and the other returning from thence to London; both conscious that their recovery from the disorders under which they laboured was desperate, expressed a strong mutual wish to enjoy a last interview with each other. For that purpose they were carried into the same apartment, laid down on two sofas nearly opposite, and remained for a long time in conversation. They then parted, as men who could not hope to meet again in this world. By Wallace's decease, Lee became Attorney General, and Mansfield was replaced in his former situation of Solicitor General, which he had filled under Lord North's administration." (*Wraxall's Own Times, vol.* ii. *p.* 385.)

LORD MANSFIELD'S RETIREMENT FROM THE BENCH.

On his Lordship's resignation, the following letter was sent to him, signed by all the Counsel of the King's Bench bar, who had practised in that Court during his administration.

"To the Earl of Mansfield.

"My Lord,

"It was our wish to have waited personally on your Lordship in a body, to have taken our public leave of you on your retiring from the office of Chief Justice of England; but judging of your Lordship's feelings by our own, and considering, besides, that our numbers might be inconvenient, we desire in this manner affectionately to assure your Lordship, that we regret with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered him pleasant and respectable.

"But while we lament our loss, we remember with peculiar satisfaction, that your Lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long

distinguished you amongst men; but that it has pleased God to allow to the evening of an useful and illustrious life the purest enjoyments which nature has ever allotted to it, the unclouded reflections of a superior and unclouded mind over its varied events, and the happy consciousness that it has been faithfully and eminently devoted to the highest duties of human society in the most distinguished nation upon earth.

"May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength."

(*Signed.*)

The letter, thus signed, was transmitted to Lord Mansfield by Mr. Erskine, at the desire of Mr. Bearcroft, the senior of the King's Bench bar, and the other subscribers, when his Lordship returned by the servant the following answer.

"*To the Honourable T. Erskine, Sergeant's Inn.*

"Dear Sir,

"I cannot but be extremely flattered by the letter which I this moment have the honour to receive.

"If I have given satisfaction, it is owing to the learning and candour of the bar; the liberality and integrity of their practice freed the judicial investigation of truth and justice from diffi-

culties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made on my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities, which made it my duty to retire.

I am, dear Sir, with gratitude to
you and the other gentlemen,
Your most affectionate
and obliged humble Servant,
" MANSFIELD.

" *Caen-Wood, June* 18, 1788."

THE SLIGO CATS.

" When Mr. Curran was passing his first summer at Cheltenham, generally inattentive as he was to his dress, he was in a sort of disguise, and little notice being taken of him, he had resort to a story to draw himself into notice. With the straight forward credulous character of the English he was perfectly well acquainted; with which he often eked out a tale. The conversation of the table turning altogether on the stupid, savage, and disgusting amusement of cock-fighting, he was determined to put an end to it by the incredible story of the *Sligo cats*. He prefaced

it by saying, that in his country there prevailed a barbarous custom of fighting these animals in the same way as mastiffs are fought in England, or bulls in Spain. That being once in Sligo, a fishing-town in the north-west of Ireland, he was invited to see this grand spectacle. That the people of rank and condition, in that part of the country, had these cats regularly bred and trained for the purpose, and crowded into town and took lodgings for the week, whenever these games were to be celebrated. The Corinthian chariot races were never more highly the scenes of gaiety and mirth in Greece than these were at Sligo. At one of them, three matches were fought on the first day with the most furious courage, with all the intrepidity of valour and skill, all that brutal rage that feudal clans could furnish; and before the third of them was finished, (on which bets ran very high) dinner was announced in the inn where the battle was fought. The company agreed, though reluctantly, to return and to lock up the room, leaving the key in trust with Mr. Curran, who protested to God, that he never was so shocked, that his head hung heavy upon his shoulders, that his heart sunk within him, on entering with the company into the room, and finding that the cats had actually eaten each other up, save some little bits of tails which were scattered

LORD CAMDEN.

round the room.—(*O'Regan's Memoirs of Curran, p.* 36.)

LORD CAMDEN.

The portrait of Lord Camden will ever occupy a most distinguished place in the gallery of English lawyers. In the course of his arduous professional life he supported, with one single exception, those great principles of constitutional freedom to which many of our lawyers have been the determined enemies. His argument in Murray's case (1752)—his judgment in that of Wilkes, and the general tenor of his conduct in parliament, especially on occasion of the American war, were all highly honourable to his judgment and his integrity. In the one instance to which an allusion is made above, the sound political principles which actuated him upon other occasions appear to have been forgotten. He defended the issuing of an illegal proclamation, on the dangerous ground of state expediency, and in the debate on this question the spectacle presented itself of Lord Camden arguing on the side of the prerogative, and Lord Mansfield on that of the constitution. It would, however, be most unjust to allow a single aberration from political rectitude to weigh against a life zealously devoted to patriotic services. The eloquence of Lord Camden

is said to have been distinguished by its captivating and graceful simplicity, and by appeals to the judgment rather than to the passions.*

MR. HARGRAVE AND CICERO.

The splendid talents of Mr. Hargrave as a lawyer are universally acknowledged, and the debt of gratitude due to him from the profession has always been cheerfully paid. It must, however, be confessed, that in some instances he did not manifest that discretion which might have been expected from a man of his sound judgment and rare talents. He was essentially a lawyer, and whenever he stepped out of the pale of his profession, it was with the loss of some portion of that high reputation which waited upon his legal character. "Mr. Hargrave," says the ingenious author of the Pursuits of Literature, "is universally acknowledged to be one of the soundest and most learned lawyers in the Kingdom; but when he will step out of his way and turn rhetorician, and fancy he is writing like Cicero de Oratore, there is some difference be-

* He was born in 1713, and terminated his long and honourable life in 1794.

tween the English and the Roman Advocate." The passage which gave rise to this remark may be found in the preface to Sir Matthew Hale's "Jurisdiction of the Lords' House of Parliament," in which Mr. Hargrave has panegyrised the Rt. Hon. Charles Yorke in the following strain.

"He was a modern *constellation* of English Jurisprudence, whose *digressions from the exuberance of the best juridical knowledge were illuminations*, whose *energies* were oracles, whose *constancy of mind* was *won* into the *pinnacle* of our English Forum at an inauspicious moment; whose *exquisiteness of sensibility* at almost the next moment from the impressions of imputed error, *stormed the fort* of even his highly cultivated reason, and so made elevation and extinction contemporaneous,—and whose *prematureness of fate* has caused an almost *insuppliable interstice* in the science of English equity."*

The preface to the law tracts likewise furnishes some instances of the very extraordinary style which the learned recorder of Liverpool occasionally assumed.

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* The following are the lines in the "Pursuits of Literature" to which this passage is appended:

"With Hargrave to the Peers approach with awe,
And sense and grammar sink in Yorke and law."

THURLOW AND WEDDERBURNE.

"We all remember when Thurlow and Wedderburne (now the Lords Thurlow and Loughborough) were first called into Parliament, how soon they proved what manner of men they were. They separated the lawyer from the statesman. It was a proud day for the bar at that period; for never before that day, were such irresistible overbearing powers and talents displayed by the *official* defenders of a minister:

Hos mirabantur Athenæ
Torrentes, pleni et moderantes frœna theatri.

"Lord North indeed, when he appointed Thurlow and Wedderburne (*his*) Attorney and Solicitor General, meant no more than to give spirit, eloquence, and argument, to his measures; but in effect he hung a mill-stone on the necks of all their successors." (*Prefatory Epistle, prefixed to the Translation of the Greek and Latin passages in the Pursuits of Literature, p.* 26.)

"Lord Loughborough, who owed to Lord North his recent elevation to the peerage, constituted one of his ablest advocates and most zealous supporters in that house. Wedderburne had risen through the gradations of the law, amidst the discussions of Parliament, side by side with Thurlow. More temperate, pliant, artful, and accommodating in his manners, than the chan-

cellor, he equalled that nobleman in eloquence, if he did not even surpass him. Churchill, in one of his satires, has thought proper to describe Wedderburne, as "Mute at the bar, but in the Senate loud." No man, however, in public life, possessed more versatility of talents, or abilities better adapted to every situation. He proved himself as refined a courtier at St. James's as he was an able lawyer at Westminster. His defence of Lord Clive, when under accusation before the House of Commons, augmented Wedderburne's legal as well as parliamentary reputation. It had been perpetually progressive since that time, and rendered him, whether a member of the lower or of the upper house, one of the most distinguished ornaments of the long robe." (*Wraxall's Own Times, v.* ii. *p.* 54.)

SIR NICHOLAS BACON.

"I have come to the Lord Keeper," says Puttenham, "and found him sitting in his gallery alone, with the works of Quintilian before him. Indeed, he was a most eloquent man, of rare wisdom and learning, as ever I knew England to breed, and one that joyed as much in learned men and good wits; from whose lips I have seen to proceed more grave and natural eloquence than from all the orators of Oxford or Cambridge."

ERASMUS'S CHARACTER OF SIR T. MORE.

"More seems to be made and born for friendship, of which virtue he is a sincere follower and very strict observer. He is not afraid to be accused of having many friends, which, according to Hesiod, is no great praise. Every one may become More's friend; he is not slow in chusing; he is kind in cherishing, and constant in keeping them. If by accident he becomes the friend of one whose vices he cannot correct, he slackens the reins of friendship towards him, diverting it rather by a little and little, than by entirely dissolving it. Those persons whom he finds to be men of sincerity, and consonant to his own virtuous disposition, he is so charmed with, that he appears to place his chief worldly pleasure in their conversation and company. And although More is negligent in his temporal concerns, yet no one is more assiduous than himself in assisting the suits of his friends. Why should I say more? If any person were desirous to have a perfect model of friendship, no one can afford him a better than More. In his conversation there is so much affability and sweetness of manner, that no man can be of so austere a disposition but that More's conversation must make him cheerful; and no matter so unpleasing but that with his wit

SIR THOMAS MORE.

he can take away from it all disgust." (*Erasm. Epist. ad Ul. Haller.*)

LORD CHANCELLOR BATHURST.

"His son (the Lord Chancellor Bathurst) may be considered the least able lawyer to whom the great seal of this country was confided, in the course of the eighteenth century. For Lord King, who became Chancellor under George I. though he survived his faculties and is said to have drivelled on the Bench, originally displayed eminent parts, which deservedly raised him from an obscure origin, his father having been a bookseller at Exeter, to that great legal dignity. Yet Lord Bathurst held his office during seven or eight years, and I have been assured that his decrees, while at the head of the Court of Chancery, are in general regarded by the bar as wise, just, and unexceptionable. He was of all the members of the cabinet the most advanced in age; nor could he, like his father, boast of exemption from the infirmities usually attendant on that period of life. A degree of caducity was visible in the frame, and even his mind did not appear to be wholly exempt from decay. In parliament his talents were rarely exerted; but his unsullied character and moral qualities entitled him to universal respect."—(*Wraxall's Own Times, v.* i. *p.* 532.)

SIR ROBERT WISEMAN AND MR. HICKERINGILL.

Sir Robert Wiseman was Dean of the Arches in the reign of Charles II. Of Mr. Hickeringill, Rector of All Saints, in Colchester, and a staunch opponent of the Civilians, some account will probably be given in a subsequent part of the present work. He was cited before Sir Robert Wiseman to answer certain alleged irregularities in the performance of his clerical duties. The following is his own account of his appearance at Doctors' Commons.

"When Mr. Hickeringill came into the Hall at Doctors' Commons, June 8, 1681, he went up to the Doctors, habited in their formalities, and with their caps on, and he also put on his hat; which Sir Robert Wiseman no sooner espied, but he bade Mr. Hickeringill be uncovered. But Mr. Hickeringill replied to him in Greek, and to all Sir Robert's repartees; and discoursed for a considerable time: Mr. Hickeringill discoursed still in Greek; at length Sir Robert's patience being spent, (and none of the Doctors would find more Greek to answer Mr. Hickeringill than Sir Robert did,) it was ordered, that this appearance, and answer in Greek only, should be registered as a non-appearance. Wherefore, then Mr. Hickeringill did repeat in English that he had said in Greek; telling Sir Robert that he first demanded to see or hear, their

commission or authority for citing him thus from his family and home, and out of the diocese where he dwells, contrary to 23 H. viii. c. 9; and that till it did appear to him, that this was his Majesty's Court Ecclesiastical, he would pay no respect to it, nor be uncovered before men that were all, (except Sir Robert,) his juniors at the University, and most of them very much his inferiors in many other respects, not suitable to his modesty there to particularize; degrees, (so easily purchased,) and empty titles, being admired by none but women and fools. Whereupon, instead of shewing a commission, Sir Robert again bade him be uncovered, which still he refused; then Sir Robert made signs to an old fellow, a kind of sumner, to come behind Mr. Hickeringill and snatch his hat off, which he did; but Mr. Hickeringill forthwith snatched his hat from the said fellow, and clapt it fast upon his head, and there kept it during his stay there; throwing amongst them a protestation, which was read to the Court." (*News from Doctors' Commons, p.* 2.)

CHARACTER OF DUNNING.

"Never, perhaps, did nature enclose a more illuminated mind in a body of meaner and more abject appearance. It is difficult to do justice to the peculiar species of ugliness which characterized his person and figure, though he did not

labour under any absolute deformity of shape or limb. A degree of infirmity, and almost of debility or decay in his organs, augmented the effect of his other bodily misfortunes. Even his voice was so husky and choaked with phlegm, that it refused utterance to the sentiments which were dictated by his superior intelligence. In consequence of this physical impediment, he lay always under a necessity of involuntarily announcing his intention to address the House some time before he actually rose, by the repeated attempts which he made to clear his throat. But all these imperfections and defects of configuration were obliterated by the ability which he displayed. In spite of the monotony of his tones, and his total want of animation, as well as grace, yet so powerful was reason when flowing from his lips, that every murmur became hushed, and every ear attentive. It seemed, nevertheless, the acute sophistry of a lawyer, rather than the speech of a man of the world, or the eloquence of a man of letters and education. Every sentence, though admirable in itself, yet resembled more the pleading of the bar than the oratory of the senate. So difficult is it for the most enlightened intellect to throw off the habit of a profession. Dunning neither delighted nor entertained his hearers; but he subdued them by his powers of argumentative ratiocination, which have rarely been exceeded. They soon after-

wards raised him to the peerage; just in time to attain that elevation, as his constitution speedily sunk under accumulated disorders, which hurried him prematurely to the grave. This extraordinary man, who was not exempt from great infirmity of mind, felt, or perceived so little his corporeal deficiencies, as to consider his person with extraordinary predilection. Fond of viewing his face in the glass, he passed no time more to his satisfaction than in decorating himself for his appearance in the world. He and Barré, who were fellow-labourers in the same vineyard, represented likewise the same borough, Calne; and belonged, or at least looked up, to the same political chief, Lord Shelburne. They consequently were animated by no common principle of union or of action with Fox and Burke, except one, that of overturning the administration. On all other points, a secret jealousy and rivalry subsisted between the adherents of the Shelburne and the Rockingham parties." (*Wraxall's Own Times, vol.* ii. *p.* 41.)

SIR JEOFFREY PALMER.

"After the happy Restoration of Charles II. Sir Jeoffrey Palmer was the first Attorney General, and held the place to the time of his death. He was a man of great ability in the law, and in that profession was what a lawyer should be, that is,

master of, and not superior to, so as to despise, the learning of his own profession: but yet his wisdom and generosity were incomparable. During all the troubles of the times he lived quiet in the Temple, a professed and known cavalier; and no temptation or fear ever shook his principles. He lived then in great business of conveyancing, and had no clerks but such as were strict cavaliers. One, I have heard, was so rigid, that he could never be brought to write Oliver with a great O. And, it was said, the Attorney chose to purchase the Manor of Charleton, because his master's name sounded in the style of it. Such amusements may be allowed to please and divert a zealous old gentleman that lived to see and enjoy all the fruits of his honest ambition. When he was first made Attorney General he had means, by the universal renewal of grants, and the floating of all manner of concerns of the Crown, which settling must pass by him, to have amassed vast wealth, as others have done and do. But he was mindful of his old friends, the cavaliers, and generally gave them their fees, and not only to such as he knew poor, for a sort of charity, but to others that had less need, out of generosity, and as a mark of his friendship and recognition of their merits. It was affirmed, that the patents granted to General Monk, passing his office, came to near 2500l. in fees, and for honour and gratitude he

took not a penny for himself. Such instances are rare, and no wonder, for in our days, the like would fail of due applause, and be despised as a foolish weakness. It was observed, that all those persons who were in his conversation or acquaintance, as well as employment, were not only loyal, but in all other respects very worthy men, and such as adhered to him to the last hour of his life, and after he was gone, kept their integrity and resolution to the end of their own, for very few, if any, of them are yet living. He was a great lover of his profession, and took a pleasure to encourage young students, and admitted divers of them, in his Society of the Middle Temple, to have access to him at evenings, and to converse familiarly with him, and he was not only affable, but condescended to put cases, as they term it, with them." (*North's Examen, p.* 510.)

The encouragement and patronage extended by Sir Jeoffrey to the Lord Keeper North, in the earlier part of his life, are commemorated by Roger North, both in the Examen and the Memoirs of the Lord Keeper.

In the latter work, the author has given an account of Sir Jeoffrey's success in converting his lady from Popery.

"He had married a lady who was a Roman Catholic, upon terms not to meddle with each other's religion; but each to enjoy their several

church professions, without any mention to the contrary, and both kept parole religiously; and yet, by dint of his egregious piety and integrity, without any other arguments or eloquence, he converted her to the Communion of the Church of England, and it fell out thus: On Sunday morning his lady would rise with him, which she had used not to do, and he told her she need not, for her church began later, and asked, *Why she should rise so soon?* She answered, *To go to church with him,*—and so she did, and continued so doing all the rest of her life. And to some of her family she declared, that she found his knowledge so great, and his course of life so truly pious and virtuous, that she concluded he must needs be in the right, and that she would submit her judgment to his, rather than to any other human authority upon earth." (*Life of North, p. 39. 4th Edition.*)

SIR THOMAS MORE'S QUESTION TO THE FOREIGN DOCTORS.

"When at Bruges, in Flanders, an arrogant fellow had set up a Thesis, that he would answer whatsoever question could be propounded to him, in any art whatsoever. Sir Thomas made this question to be put up, whether *averia capta in withernamia sunt irreplegiabilia?* adding, that there was one of the English Ambassador's reti-

nue that would dispute with him thereof. This braggadocio, not so much as understanding those terms of our common law, knew not what to answer to it, and so he was made a laughing-stock to the whole city." (*More's Life of More, p.* 60. *Jortin's Life of Erasmus, vol.* i. *p.* 175.)

A similar anecdote is told of Lord Keeper Williams. The Lord Keeper, it must be remembered, was a churchman, and was therefore supposed to be wanting in his knowledge of the common law. "The terms of the common law, as in all other professions and sciences, seem barbarous to the vulgar ear, and had need to be familiarized with pre-acquaintance; which being the primar of that rational learning, he had inured himself to it long before, and was nothing to seek in it. Yet one of the bar thought to put a trick upon his freshmanship, and trouled out a motion crammed like a Granada with obsolete words, coins of far-fetched antiquity, which had been long disused, worse than Sir Thomas More's *averia de withernam* among the masters of Paris. In these misty and recondite phrases, he thought to leave the new Judge feeling after him in the dark, and to make him blush that he could not give answer to such mystical terms as he had conjured up. But he dealt with a wit that was never entangled in a bramble bush; for, with a serious face, he answered him in a cluster of most crabbed notions,

picked up out of metaphysics and logic, as categorematical and syncategorematical, and a deal of such drumming stuff, that the motioner, being foiled at his own weapon, and well laughed at in court, went home, with this new lesson, That he that tempts a wise man in jest, shall make himself a fool in earnest." (*Hacket's Life of Williams, part* i. *p.* 75.)

The subtle theses of the schoolmen and logicians are admirably ridiculed in the Memoirs of Martinus Scriblerus, where a number are collected from the works of St. Thomas Aquinas, Saurez, and others. The following question would surely have puzzled the braggadocio of Bruges fully as much as that proposed by Sir Thomas More. *An præter* esse reale *actualis essentiæ, sit aliud* esse necessarium *quo res actualiter existat?* In English, Whether besides the real being of actual being, there be any other being necessary to cause a thing to be?

CHARACTER OF LORD THURLOW, BY SIR NATHANIEL WRAXALL.

Lord Thurlow, who at this time had held the Great Seal between two and three years, though, in point of age, the youngest member of the cabinet, enjoyed, in many respects, greater consideration than almost any other individual composing it. He had been indebted in his youth to the in-

defatigable exertions and importunities of the celebrated Duchess of Queensbury, the friend of Gay, Pope, and Swift, for first procuring him from Lord Bute a silk gown, to which distinction he long ineffectually aspired. His talents had subsequently excited admiration in both Houses of Parliament no less than at the bar, while he sat in the House of Commons, as Attorney General, during more than seven years, from 1771 to 1778.

Lord North derived the greatest assistance from his eloquence and ability. His removal to the House of Peers would even have left an awful blank on the Treasury Bench in the midst of the American war, if his place had not, during the two succeeding years, been ably, perhaps fully, supplied by Wedderburn. As Speaker of the Upper House, Lord Thurlow fulfilled all the expectations previously entertained of him. His very person, figure, voice, and manner, were formed to lend dignity to the Woolsack. Of a dark complexion, and harsh, but regular, features, with a severe and commanding demeanour, which might be sometimes denominated stern, he impressed his auditors with awe before he opened his lips. Energy, acuteness, and prodigious powers of argument, characterised him in debate. His comprehensive mind enabled him to embrace the question under discussion, whatever it might be, in all its bear-

iags and relations. Nor, if we except Lord Camden, who was already far advanced in life, did the Opposition possess any legal talents in the House of Peers that could justly be put in competition with those of Lord Thurlow.

These admirable parts were, nevertheless, by no means unaccompanied with corresponding defects. As Lord Chancellor, he was accused of procrastination, in suffering the causes brought before him in his Court to accumulate without end. Perhaps this charge, so frequently made against those who have held the Great Seal, was not more true, as applied to him, than of others who succeeded him in his office. But, even in Parliament, his temper, morose, sullen, and untractable, sometimes mastering his reason, prevented him from always exerting the faculties with which nature had endowed him, or at least, clouded and obscured their effect. In the Cabinet, these defects of character, which rendered him often impracticable, were not to be surmounted by any efforts or remonstrances. It can hardly be believed, that at ministerial dinners, where, after the cloth was removed, measures of state were often discussed or agitated, Lord Thurlow would frequently refuse to take any part. He has even, more than once, left his colleagues to deliberate, whilst he sullenly stretched himself along the chairs, and fell, or appeared to fall, fast asleep.

If I had not received this fact from an eye-witness, and a member of that Cabinet, I should not, indeed, venture to report so improbable a circumstance.

Notwithstanding the ruggedness and asperity which he displayed, qualities that procured him the nick-name of *the Tiger*, no man could at times appear more pleasing, affable, and communicative in conversation. I have once or twice seen him on such occasions, which were more highly valued, because they were rare or unexpected. During the period of his youth, he had led a dissolute life, and had given proofs of his devotion to pleasures, scarcely compatible, as it might have been thought, with the severe studies and profession of the law. To these irregularities the Duchess of Kingston imprudently ventured to allude, while on her trial at the bar of the House of Lords, when Thurlow was Attorney General. Like Henley, Earl of Northington, his predecessor in the high office of Chancellor, Thurlow mingled oaths and execrations with his common discourse. In the afternoon of life, conviviality, wine, and society, unbent his mind. It was with Mr. Rigby, Lord Gower, Lord Weymouth, Mr. Dundas, and a few other select friends, that he threw off his constitutional severity. At the Pay-Office in Whitehall, where Rigby then resided, Lord Thurlow forgot the double toils annexed to his situation as Head of

the Law and as Minister of State. Possessed of faculties so transcendent, however mingled with human weakness and infirmity, he must always be considered as one of the most eminent individuals who sat in the Councils of George the Third at any period of his reign. (*Wraxall's Own Times, vol.* i. *p.* 527.)

Cowper, the poet, seems to have entertained a more favourable opinion of Lord Thurlow's character, and, on his promotion to the Chancellorship, complimented him with the following verses:

Round Thurlow's head, in early youth,
And in his sportive days,
Fair Science pour'd the light of truth,
And Genius shed his rays.

"See!" with united wonder cried
Th' experienced and the sage,
"Ambition in a boy supplied
With all the skill of age!

Discernment, eloquence, and grace,
Proclaim him born to sway
The balance in the highest place,
And bear the palm away."

The praise bestow'd was just and wise;
He sprang impetuous forth,
Secure of conquest, where the prize
Attends superior worth.—

LORD ELDON.

So the best courser on the plain,
Ere yet he starts, is known;
And does but at the goal obtain
What all had deem'd his own.

LORD ELDON.

The character of Lord Eldon is not yet become matter of history, and it is therefore difficult to appreciate it properly. It will, perhaps, on this account, be better to confine the present brief notice of this very eminent judge to an enumeration of the steps by which, from almost a humble situation in life, he attained the highest honours within the grasp of an English subject. He was admitted a student of the Middle Temple in 1772, and was called to the Bar in Hilary Term, 1776. For some time he practised almost exclusively as an Equity draughtsman, but finding so sedentary an occupation injurious to his health, he appeared in Court, and quickly rose into notice. In the year 1783, a patent of precedency was granted to him, and soon afterwards he was introduced into Parliament for the Borough of Webly, in Hereford. In 1788, Mr. Scott was knighted on being raised to the office of Solicitor-General, and in

1793, he was appointed Attorney-General. This office he held until the year 1799, when he was created a Peer, and made Chief Justice of the Common Pleas. Four years afterwards he was raised to the Woolsack, a seat which he has since continued to occupy, with the exception of the short period during which Lord Erskine held the Seals.

LORD KEEPER WILLIAMS'S NOTION OF THE FLEET.

"One Beeston, who had been committed from the power of the high Court of Chancery, loathing this captivity, besought this new officer (L. K. Williams) to be released and was denied; he cries out for mercy to the King, roars out that the parliament might hear him, follows the Lord Buckingham with his clamours, who advised the Lord Keeper to consider upon it. It is a maxim in old Columella, *lib.* vi. *c.* 2, *pervicax contumacia plerumque sævientem fatigat, &c.*; boisterous importunity thinks to fare better than modest innocency; but he gave the Lord Marquis this answer.

"My noble Lord,

"Decrees once made must be put in execution; else I will confess this Court to be the greatest

imposture and grievance in the Kingdom. The damned in hell do never cease repining at the justice of God; nor the prisoners in the Fleet at the decrees in Chancery. In the which hell of prisoners, this one for antiquity and obstinacy may pass for a Lucifer. I neither know him nor his cause, but as long as he stands in contempt, he is not like to have any more liberty." (*Hacket's Life of Williams, Part* i. *p.* 71.)

POINTS OF GENTOO LAW.

The following extracts are made from a translation of the Gentoo code, executed from a Persian version of the original Shanscrit, by Mr. Nathaniel Brassey Halhed, during the government of Warren Hastings, and dedicated to him by the translator.

The venerable principle of legitimate government and paternal sway, we find, at the outset, enforced in a very emphatic manner. "Providence," says the ancient legislator, "created the magistrate for the guardianship of all. The magistrate must not be considered as a mere man; even in the case of the magistrate being a child, he must still be looked upon in the light of the *Dewtah*, or Deity; in truth, the magistrate is the *Dewtah* in a human form, born in this world. Providence created punishment for the preservation of the magistrate." It is only proper that so

sublime a personage as the magistrate should be properly accoutred, and he is accordingly enjoined to cause to be made for himself a round umbrella, of the feathers of the bird *lut*, or the peacock. When provided with this appendage, he is in a proper situation to consult with his councillors, "whereupon," says the law, "he shall chuse a retired place, on the top of the house, or on the top of a mountain, or in the desert, or some such secret recess, and shall hold his council there; and in places where there are parrots or other talkative birds, he shall not hold his council while they are present." To this provident caution against the loquaciousness of the feathered race, the law adds two injunctions, which are highly necessary to be observed in all legitimate governments. Hypocrisy and treachery are the virtues of this good old form of government; and therefore "the magistrate shall keep such a guard upon himself, that his foibles may never be discovered, and by sending his spies, he shall inform himself of the faults of others."

The methods prescribed for attaining that very desirable but often very difficult object, viz. the recovery of debts, are curious.—"If a creditor on the day appointed for payment, demands his money of the debtor, who refuses to discharge the debt," first he shall treat the matter with some delicacy, and trying what indirect influence will

do, "he shall speak to the friends and relations of the debtor, and procure them to demand payment." If this proves unsuccessful, his next step is a far more common one: "he shall go in person and importune for his money, and stay some time at the debtor's house, without eating or drinking." If these means fail, he shall next try the effect of taking the debtor to his own house: "he shall carry the debtor home with him, and having seated him before men of character and reputation, shall there detain him." It is not stated whether the debtor is, in this case, to eat and drink in the creditor's house; if so, the good fare, in company with "men of reputation," might have some efficacy. If even this method should not succeed, the law next allows a little roguery to be hazarded: "he shall endeavour, by feigned pretences, to get hold of some of his goods."—This is an old *ruse de guerre*, and is chiefly remarkable here as being enjoined by legal sanction. If all these circuitous proceedings prove unavailing, the creditor is then permitted to wage serious war; he "ramps for his money;" and by an operation in the nature of a *fieri facias*, pounces, "with one fell swoop," on the wife and "all the little ones" of the defendant: "if he cannot by evasive means, distrain the debtor's goods, he shall then seize and confine the debtor's wife, children, cattle, buffaloes, horses, and such kind

of useful animals; also his pots, clothes, mats, and furniture; and seating himself at the debtor's door, shall there receive his money." If even these fierce extremes are unable to overcome the obstinacy or the poverty of the debtor, nothing remains to be tried but the *ultima ratio* of all plaintiffs, the last and plenary remedy of the *capias ad satisfaciendum;* "he shall seize and bind the debtor's person, and procure, by forcible means, a discharge of the debt."

That portion of the law which treats of the division of inheritable property, is laid down with the utmost precision, and with strict attention to the natural claims of the inheritor. A man is considered as only tenant for life of his own property, and cannot distribute his effects by will. In the course of these regulations, the legislator proceeds with great ease to the most complex relations, and threads the degrees of affinity with as much dexterity as one of his native jugglers shews in keeping up half a dozen balls at once. At last he arrives at the concluding specimen of his art, and breaks out in a perfect paroxysm of unintelligibility:—"If there be no grandfather's grandfather's father's brother's grandson, it goes to the grandfather's grandfather's grandfather's daughter's son: if there be but one grandfather's grandfather's grandfather's daughter's son, he shall obtain the whole; if there are several grand-

father's grandfather's grandfather's daughter's sons, they shall all receive equal shares."

In the matter of arbitration, we find some rules laid down not unworthy of the notice of these gentlemen on whom duties of that nature devolve. The first rule is simple enough, and common to all countries.—"When an arbitrator of discernment hears any affair, he shall first demand of the plaintiff, 'What is your claim?' The plaintiff shall then relate his claim: afterwards he shall demand of the defendant, 'What answer do you return in this case?' The defendant also shall then repeat his answer." The succeeding regulation is more astute:—"The arbitrator, at the time of examination, shall observe both the plaintiff and the defendant narrowly, and take notice if either, and which of them, when he is speaking, hath his voice faulter in his throat, or his colour change, or his forehead sweat, or the hair of his body stand erect, or a trembling come over his limbs, or his eyes water, or if, during the trial, he cannot stand still in his place, or frequently licks and moistens his tongue, or hath his face grow dry, or in speaking to one point, wavers and shuffles off to another, or if any person puts a question to him, is unable to return an answer; from the circumstances of such commotions, he shall distinguish the guilty party."

The mode of examining witnesses is as follows:

"He who means to question a witness, having bathed himself, shall put his questions in the tenth *ghurrie* of the day; the witness also, having bathed himself, and turned himself towards the eastern or northern quarter, shall deliver his evidence: the examiner shall ask the witness, (if a *Bramin*) with civility and respect, saying, 'Explain to me what knowledge you have of this affair;' and to a *Chehteree*, he shall say, 'What do you know of this affair? speak the truth!' and to a *Bice*, he shall say, 'What do you know of this affair? if you give false evidence, whatever crime there is in stealing kine, or gold, or *paddee*, or wheat, or *gràm*, or barley, or mustard, and such kind of grain, shall be accounted to you;' and to a *Sooder*, he shall say, 'What do you know of this affair? speak; if your evidence is false, whatever crime is the greatest in the world, that crime shall be accounted to you.'" Here we may observe, that the law only requires the *Bramin*, or fine gentleman, to be interrogated with civility and respect; the poor *Sooder* may be examined and cross-examined in the usual manner.

Against the utterance of "Scandalous and bitter words," the provisions of the law are very minute. "If a man be deficient in a hand, or a foot, or an ear, or an eye, or a nose, or any other member, and a person of an equal cast, and of equal abilities with him, should say to him, in a reproachful

manner, 'You are deficient in a hand, or a foot, or an ear, or an eye, or a nose, or any other member,' or should say to him, 'Such limb of yours is very beautiful,' the magistrate shall fine him twelve *puns* of *cowries*." To prognosticate the death of great men has always been a dangerous undertaking, and we find this offence expressly prohibited: "If any man should say, that, 'The magistrate will die at such a particular time,' the magistrate shall fine that person eight hundred *puns* of *cowries*." A proper degree of humility and of respectful deference, on the part of the plebeian, towards the man of rank and fashion, is sharply insisted on: "If a man of inferior cast, proudly affecting an equality with a person of superior cast, *should speak at the same time with him*, the magistrate, in that case, shall fine him to the extent of his abilities."

The magistrate, we have seen, is a very sacred personage, and, it seems, can do no wrong. To punish him for the commission of a crime, is in itself a crime, which the worthy magistrate takes care to visit with a signal retaliation. "If a magistrate has committed a crime, and any person, upon the discovery of that crime, should beat and ill-use the magistrate, in that case, whatever be the crime of murdering one hundred *Bramins*, such crime shall be accounted to that person; and the magistrate shall *thrust an iron spit through*

him, and roast him at the fire!" A similar spirit of cruelty pervades all the criminal law. "Whoever, by breaking through walls, hath frequently stolen much wealth, the magistrate shall cause the booty to be returned to the owner, and shall cut off both the hands of such person, and crucify him." "If a man steals any small animal, exclusive of the cat and the weasel, the magistrate shall cut off half his foot." Mutilation and agonizing punishments are dealt unsparingly to the human species, but the inferior classes of life are carefully protected from injury. "If a man kills a fish, the magistrate shall fine him ten *puns* of *cowries*. If a man kills an insect, the magistrate shall fine him one *pun* of *cowries*." The same law that uses very little ceremony in impaling a man, anxiously guards against the demolition of a fly!

The chapter "*Of what concerns women*," contains a string of very bitter libels upon the fair sex, in excuse for which, it is urged by the translator, that the Bramins, who compiled the code, were men far advanced in years, and that the old gentlemen had lost, with their youth, their gallantry and good manners. But it would rather seem, that the laws selected by them speak only the same language of contempt and censure held by all eastern nations alike on this topic. However, the ancient men utter, here and there, a season-

able word.—"A man, both day and night, must keep his wife so much in subjection that she by no means be mistress of her own actions; if the wife have her own free will, she will behave amiss." —The law then proceeds to sum up the feminine character with great acrimony of satire: "Women have six qualities; the first, an inordinate desire for jewels and fine furniture, handsome clothes and nice victuals; the second, immoderate lust; the third, violent anger; the fourth, deep resentment; the fifth, another person's good appears evil in their eyes; the sixth, *they commit bad actions.*" The following provision, with which we shall conclude these extracts, refers to the well-known custom of the Hindoo widows. The sacrifice of their lives is not peremptorily enjoined: "It is proper for a woman, after her husband's death, to burn herself in the fire with his corpse; every woman, who thus burns herself, shall remain in Paradise with her husband three *crore* and fifty *lacks* of years by destiny; if she cannot burn, she must in that case preserve an inviolable chastity; if she remains always chaste, she goes to Paradise; and if she does not preserve her chastity, she goes to hell!"

SERGEANT BETTESWORTH AND DEAN SWIFT.

The following lines on Sergeant Bettesworth, which Swift inserted in one of his poems, gave

rise to a violent resentment on the part of the barrister:

—"So at the bar the booby Bettesworth,
Though half a crown o'erpays his sweat's worth,
Who knows in law, nor text, nor margent,
Calls Singleton *his brother Sergeant.*"

The poem was sent to Bettesworth at a time when he was surrounded with his friends in a convivial party; he read it aloud till he had finished the lines relative to himself. He then flung it down with great violence,—trembled and turned pale,—and after some pause, his rage for a while depriving him of utterance, he took out his pen-knife, and opening it, vehemently swore, "With this very penknife, by G—, I will cut off his ears."—He then went to the Dean's house, and not finding him at home, followed him to the house of a friend; where, being shown into a back room, he desired the doctor might be sent for, and on Swift's entering the room, and asking what were his commands, "Sir," said he, "I am Sergeant Bet-tes-worth;" (which was always his pompous way of pronouncing his own name, in three distinct syllables.) "Of what regiment, pray, Sir?" said Swift. "O Mr. Dean, we know your powers of raillery:—you know me well enough; I am one of his Majesty's Sergeants at Law, and I am come to demand if you are the author of this poem (producing it) and these vil-

hinous lines on me;" at the same time reading them aloud, with great vehemence and much gesticulation. "Sir," said Swift, "it was a piece of advice given me by Lord Somers, never to own or disown any writing laid to my charge; because if I did this in some cases, whatever I did not disown afterwards, would infallibly be imputed to me as mine. Now, Sir, I take this to be a very wise maxim, and as such have followed it ever since; and I believe it will hardly be in the power of your rhetoric, as great a master as you are of it, to make me swerve from that rule." After some other conversation of the same nature, the Sergeant quitted the room, saying,—"Well, since you will give me no satisfaction in this affair, let me tell you, your gown is your protection: under the sanction of which, like one of your own *Yahoos*, who had climbed up to the top of a high tree, you sit secure, and squirt your filth on all mankind." Swift, when he related this, said that the fellow shewed more wit than he thought he had possessed.

SATISFACTORY BAIL.

A gentleman once appeared in the Court of King's Bench, to give bail for a friend in the sum of three thousand pounds. Sergeant Davy, though he well knew the responsibility of the gentleman, could not restrain his accustomed impertinence.

"Well, Sir, how do you make yourself to be worth three thousand pounds?" The gentleman very deliberately specified the particulars up to two thousand nine hundred and forty pounds. "Aye," said the Sergeant, "but that is not enough by sixty." "For that sum," replied the other, "I have a note of hand of one Sergeant Davy, and I hope he will have the honesty soon to discharge it." This set the Court in a roar, the Sergeant was for once abashed, and Lord Mansfield said, "Well, brother Davy, I think we may accept the bail!"

SIR WILLIAM JONES'S LAW MANUSCRIPTS.

It appears from a letter addressed by Mr. Jones to the Bishop of St. Asaph, dated Sept. 13, 1782, that he had written several tracts on legal subjects. What has become of these valuable MSS.?

"In regard to your Lordship's indulgent and flattering prediction, that my Essay on Bailment would be my last work, and that for the future, business and the public would allow me to write no more, I doubt whether it will be accomplished, whatever may be my practice or situation; *for I have already prepared many tracts on Jurisprudence,* and when I see the volumes written by Lord Coke, whose annual gains were twelve or

fourteen thousand pounds,* by Lord Bacon, Sir Matthew Hale, and a number of Judges and Chancellors, I cannot think that I should be hurt in my professional career, by publishing now and then a law tract upon some interesting branch of the science; and the science itself is indeed so complex, that without writing, which is the chain of memory, it is impossible to remember a thousandth part of what we see, read, or hear. Since it is my wish, therefore, to become in time as great a lawyer as Sulpicius, I shall probably leave as many volumes of my works as he is said to have written."

LORD SOMERS.

The following anecdotes of Lord Somers were copied from a manuscript in the possession of Dr. Birch. They may be found in the second volume of Mr. Seward's *Anecdotes of distinguished Persons.*

"April 26th, 1716, died John Lord Somers. Burnet hath done him justice in several places, and Addison has given us his character in colours so strong, that little remaineth to be added.

"His application and capacity were equally

* This does not appear to be correct. Even later, in the time of Roger North, the emoluments of the Attorney General did not exceed 7000*l.* a year, and Sir M. Hale tells us, that "a 1000*l.* a year was a great deal for any common lawyer to get."

great and uncommon. At his first going to school, he never gave himself any of the diversions of children of his age; for at noon the book was never out of his hand. To the last years of his life, a few hours of sleep sufficed: at waking, a reader attended, and entertained him with the most valuable authors. Such management raised him to the highest eminence in his own profession, and gave him a superiority in all kinds of useful knowledge and learning.

"Natural strength and clearness of understanding, thus improved, was the distinguishing peculiarity which appeared in all his performances. Every thing was easy and correct, pure and proper. He was unwearied in the application of all his abilities for the service of his country. As a writer he greatly assisted the cause of liberty in the days of its utmost peril. As an advocate, a judge, a senator, and a minister, the highest praises, and the most grateful remembrance, are due to his merit.

"He was invariable and uniform in the pursuit of right paths. As he well understood, he was equally firm in adhering to the interest of his country while in its service, and when in a private station. To this uniformity the calumnies and reproaches of his enemies may be truly ascribed. They envied him his superiority; and as their wishes and designs were far from being engaged

for the real welfare of society, a man so upright and able, naturally became the object of their hatred; and they had too easy and too much credit. What greater misfortune can be entailed on popular government than forwardness in receiving all the impressions of malevolence?

"When I had finished my letter, it came into my head to add Somers's character, which was uniform, to Shrewsbury, which was all deformity.

"I have been so very short, not only for the reasons prefixed, but in expectation of your having additions from your truly worthy friend Mr. Yorke. The account of his behaviour at school I had many years ago from a school-fellow. I think Walsall, in Staffordshire, was the place where they learned their grammar together. I remember very well his account of Johnny Somers, being a weakly boy, wearing a black cap, and never so much as looking out when they were at play, &c.

"Mr. Winnington's account is, that by the exactness of his knowledge and behaviour, he discouraged his father, and all the young men who knew him. They were afraid to be in his company."

The high panegyric pronounced upon Lord Somers by Horace Walpole, in his *Anecdotes of royal and noble Authors*, will be a proper addition to the foregoing extracts.

"He was one of those divine men who, like a

chapel in a palace, remain unprofaned, whilst all the rest is tyranny, corruption, and folly. All the traditionary accounts of him, and the historians of the last age, represent him as the most incorrupt lawyer, and the honestest statesman; as a master orator, a genius of the finest taste, and as a patriot of the noblest and most exclusive views; as a man who dispensed blessings by his life, and planned them for posterity."

It is almost incredible that even the party animosity of Swift could have tempted him to draw up such a character of Somers as the following.

"The Lord Somers may be very deservedly reputed the head and oracle of that party, (the Whigs.) He hath raised himself by the coincidence of many circumstances to the greatest employments of the state, without the least support from birth or fortune; he hath constantly, and with great steadiness, cultivated those principles under which he grew. That accident which first produced him into the world, of pleading before the Bishops whom King James had sent to the Tower, might have proved a piece of merit, as honourable as it was fortunate; but the old republican spirit which the Revolution had restored, began to teach other lessons, that, since we had accepted a new King from a Calvinistical Commonwealth, we must also admit new maxims in religion and government. But since the nobility

and gentry would probably adhere to the established Church, and to the rights of Monarchy, as delivered down from their ancestors, it was the practice of these politicians to introduce such men as were perfectly indifferent to any, or no, religion, and who were not likely to inherit much loyalty from those to whom they owed their birth. Of this number was the person whom I am now describing. I have hardly known any man with talents more proper to acquire and preserve the favour of the Prince, never offending in words or gesture, which are in the last degree courteous and complimentary, wherein he set an excellent example to others, his colleagues, which they did not think fit to follow. But this extreme civility is universal and undistinguished, and in private conversation, where he observeth it as inviolably as if he were in the greatest assembly, it is sometimes censured as formal. Two reasons are assigned for this behaviour: first, from the consciousness of his humble original, he keepeth all familiarity at the utmost distance, which otherwise might be apt to intrude; the second is, that being sensible how subject he is to violent passions, he avoideth all incitements to them, by teaching those whom he converseth with, from his own example, to keep a great way within the bounds of decency and respect; and it is, indeed, true, that no man is more apt to take fire upon the least appearance

of provocation, which temper he strives to subdue with the utmost violence upon himself; so that his breast has been seen to heave, and his eyes to sparkle with rage, in those very moments when his words and the cadence of his voice were in the humblest and softest manner. Perhaps, that force upon his nature may cause that insatiable love of revenge which his detractors lay to his charge; who consequently reckon dissembling among his chief perfections. Avarice he has none, and his ambition is gratified by being the uncontested head of his party. With an excellent understanding, adorned with all the polite parts of learning, he has very little taste for conversation, to which he prefers the pleasure of reading and thinking, and, in the intervals of his time, amuseth himself with an illiterate chaplain, an humble companion, or a favourite servant. These were some few distinguishing marks in the character of that person who now presideth over the discontented party; although he be not answerable for all their mistakes; and if his precepts had been more strictly followed, perhaps their power would not have been so easily shaken. I have been assured, and heard him profess, that he was against engaging in that bloody persecution of Dr. Sacheverell, as what he foresaw was likely to end in their ruin; and he blamed the rough behaviour of some persons to the Queen, as a great

failure in prudence; and that when it appeared her Majesty was firmly resolved upon a treaty of peace, he advised his friends not to oppose it in its progress, but find fault with it after it was made; which would be a copy of the like usage they themselves had met with after the treaty of Ryswic, and the safest, as well as most probable way of disgracing the promoters and advisers. I have been the longer in representing to the reader some idea of this extraordinary genius, because whatever attempt hath hitherto been made with any appearance of conduct, or probability of success, to restore the dominion of that party, was undeniably contrived by him. And I profess the same for the future, as long as his age and infirmities will leave him capable of business." (*History of the Four last Years of Queen Anne.*)

The character of Lord Somers given by Addison, in the Freeholder, (*for May* 14, 1716,) is probably well known to the reader. This character is termed by Horace Walpole, in his Catalogue of Royal and Noble Authors, laboured, diffuse, and feeble, neither worthy of the author nor his subject. Addison compares Lord Somers with Bacon, which is certainly not a very happy parallel. Walpole has instituted a comparison between his Lordship and the French Chancellor de l'Hospital. It is by no means creditable to our literature, that the Life of so eminent a States-

man and Lawyer as Lord Somers, should yet remain to be written. The old Lives of him are extremely imperfect, and the late attempt of Mr. Maddock merits very little commendation.

LORD KEEPER WILLIAMS AND JAMES I.

When Williams was Chaplain to Lord Ellesmere, the Chancellor, he attracted the notice and regard of James I. who, notwithstanding his ecclesiastical character, raised him subsequently to the highest dignity of the Law. He was the last churchman who filled the office of Chancellor, while Lord Shaftesbury, in the reign of Charles II. was the last layman raised to the Woolsack. The Life of Lord Keeper Williams, by his Chaplain, Bishop Hacket, is one of the few good specimens of legal biography in our literature. The portion of it, however, which relates to the Lord Keeper's judicial career, is, comparatively, very small, though it affords some entertaining anecdotes, and some curious illustrations of the state of the law at that period. The following passage gives an admirable idea of the King's character, and of the manner in which he used to conduct himself towards his learned favourites.

"Now he, whom I insist upon, being a subject thus fit for impression, his good master, King James, was as ready to put the stamp upon him; he never met with any before, no, not the Lord

Egerton, much less with any after, that loved him like King James, at the full rate of his worth. The King's table was a trial of wits. The reading of some books before him was very frequent while he was at his repast. Otherwise he collected knowledge by variety of questions, which he carved out to the capacity of his understanding writers.* Methought his hunting humour was not off as long as his courtiers, I mean the learned, stood about him at his board. He was ever in search after some disputable doubts, which he would wind and turn about with the most stabbing objections that ever I heard; and was as pleasant and fellow-like in all these discourses, as with his huntsman in the field. They that, in many such genial and convivial conferences, were ripe and weighty in their answers, were indubiously designed to some place of credit and profit. Wherein

* The "variety of questions" put by James not unfrequently perplexed the bye-standers. Judge Whitelocke, in his Diary, or *Liber Famelicus*, relating an interview which he had with Sir Edward Coke, says, "I asked him, why he staid not at the Court to dinner? He told me, that whilst he stood by the King at dinner, he would be ever asking him questions of that nature, that he had as liefe be out of the room; and that made him as far off as he might ever at such times. I guess it was concerning matters of his prerogative, which the King would take ill, if he were not answered in them as he would have it."

he followed the Emperor Adrian, as Spartianus remembers it: *Omnes professores et honoravit et divites fecit, licet eos quæstionibus semper agitaverit.* But among them all with whom King James communed, *was found none like Daniel,* (c. i. v. 19.) His Majesty gave his ear most graciously to this Chaplain, and directed his speech to him when he was at hand, oftener than to any that crowded near, to hearken to the wisdom of that Solomon. He had all those endowments mightily at command, which are behoved in a scholar, Πρὸς ἐντευξεις, as Aristotle terms them, unto extemporary colloquies. *Ingenium in numerato habuit,* as Quintil. lib. 6, said of a ready man, he had all his learning in ready money, and could spend it at an hour as well as at a day's warning. There was not a greater master of perspicuity and elucidate distinctions; which looked the better in his English that ran sweet upon his tongue, especially being set out with a graceful facetiousness, that hit the joint of the matter; for his wit and his judgment never parted. If the King led him quite out of the road of verbal learning, and talked to him of real and gubernative wisdom, he pleased his Majesty most of all, because his answers discovered that he loved to see through the present to the future. Chiefly, since he would be bold, not only to argue, but to quarrel against innovations. For, though he was never addicted to his

own opinions, no, not among his inferiors, with that pertinacious obligation for better for worse; yet, neither his best friends nor the higher powers, could ever get him pleased with new crotchets, either in Church or State. *His constant rule was, that old imperfections were safer than new experiments.* To which purpose a saying of his was famous in court. The manner how it came in was thus: A great servant to the King pressed for a change of that which was well enough already, and commended his design by this note, That it would be an easier way for the people. *Sir,* (says Dr. Williams,) *a bed is an easy repose, but it is not wholesome to lie upon a new tick, and new driven feathers.* All these passages the King considered from time to time; *multa viri virtus animo, &c.* And was glad he had a servant to be raised up, of whom he thought, as Cicero did of Demetrius Valerius, (*lib.* iii. *de Leg.*) *Et doctrinæ studiis et regendâ civitate princeps;* that he was a full scholar, fit for the sacred and for the civil gown. In a word, *one of the stronger cattle,* (*Gen.* 30. 41,) and designed for a *bell-wether in Jacob's flock.*" (*Memorial of Williams, part* i. *p.* 38.)

The Historian, Arthur Wilson, tells us, that "this learned prelate was of a comely and stately presence; and *that,* animated with a great mind, made him appear very proud to the vulgar eye;

but that very temper raised him to aim at great things, which he effected." (*History of King James* I. *p.* 196.) Upon this passage, Dr. Hacket has observed, "*Quædam videntur et non sunt*; so far was his heart from pride, that he never thought himself the finer for the trappings of fortune. Yet, so far from baseness, that he knew the bench he sat upon; and would not be made despicable in the eyes of the world, much less to be brought about to serve great men's turns, and stretch the causes of the court, according to the contents of their letters and messages,* which were no better, in a rude phrase, than to be a pander to their lust, to let them deflower justice." (*Memorial, part* i. *p.* 54.)

CHARACTER OF LORD MANSFIELD, BY THE BISHOP OF WORCESTER.

The Bishop of Worcester, in his Life of Warburton, has given the following character of Lord Mansfield. It is principally curious as the production of a contemporary, who had witnessed his Lordship's conduct in the House of Lords.

"Mr. Murray, afterwards Earl of Mansfield, and Lord Chief Justice of England, was so extra-

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* This passage furnishes another example of the great prevalency of judicial corruption at that period. (*See Ante, vol.* i. *p.* 223.)

ordinary a person, and made so great a figure in the world, that his name must go down to posterity with distinguished honour in the public records of the nation. For his shining talents displayed themselves in every department of the State, as well as in the supreme Court of Justice, his peculiar province, which he filled with a lustre of reputation, equalled, perhaps, certainly not exceeded, by any of his predecessors.

" Of his conduct in the House of Lords, I can speak with the more confidence, because I speak from my own observation. Too good to be the leader, and too able to be the dupe, of any party, he was believed to speak his own sense of public measures, and the authority of his judgment was so high, that in regular times the House was usually decided by it. He was no forward or frequent speaker, but reserved himself (as was fit,) for occasions worthy of him. In debate, he was eloquent as well as wise, or rather, he became eloquent by his wisdom. His countenance and tone of voice imprinted the ideas of penetration, probity, and candour; but what secured your attention and assent to all he said, was his constant good sense, flowing in apt terms, and in the clearest method. He affected no sallies of the imagination, or bursts of passion; much less would he condescend to personal abuse, or to petulant altercation. All was clear candid reason, letting

itself so easily into the minds of his hearers, as to carry information and conviction with it. In a word, his public senatorial character very much resembled that of Messala, of whom Cicero says, addressing himself to Brutus, 'Do not imagine, Brutus, that for worth, honour, and a warm love of his country, any one is comparable to Messala; so that his eloquence (in which he wonderfully excels,) is almost eclipsed by those virtues; and even in his display of that faculty, his superior good sense shews itself most; with so much care and skill hath he formed himself to the truest manner of speaking! His powers of genius and invention are confessedly of the first size, yet he almost owes less to them than to the diligent and studious cultivation of judgment.'

"In the commerce of private life, Lord Mansfield was easy, friendly, and agreeable; extremely sensible of worth in other men, and ready on all occasions to countenance and patronize it."

THE STATE OF THE LAW IN AMERICA.

The present state of the Law in America, where many important experiments have been made upon the English system of jurisprudence, furnishes much matter for curious speculation. The subjoined observations upon the subject are borrowed from a Tract, intitled, "*A Discourse concerning the Influence of America on the Mind*;

being the Annual Oration delivered before the American Philosophical Society, &c. By C. J. Ingersoll. Philadel. 1823." We shall, probably, have occasion, in the course of these volumes, to add some further remarks on this interesting subject.

"Annual Sessions of five-and-twenty Legislatures multiply laws, which produce a numerous bar, in all ages the teeming offspring of freedom. Their number in the United States has been lately computed at six thousand, which is, probably, an under estimate. American Lawyers and Judges adhere, with professional tenacity, to the Laws of the Mother Country. The absolute authority of recent English adjudications is disclaimed; but they are received with respect, too much bordering on submission. British Commercial Law, in many respects inferior to that of the Continent of Europe, is becoming the Law of America. The Prize Law of Great Britain was made that of the United States, by judicial legislation, during flagrant war between the two countries. The homage lately paid by the English Prime Minister to the neutral doctrines proclaimed by the American Government in the beginning of the French Revolution, which declares them worthy of the imitation of all neutral nations, may teach us, that the American State Papers contain much better principles of international jurisprudence than the

passionate and time-serving, however brilliant, sophisms of the British Admiralty Courts.* On the other hand, English Jurisprudence, while silently availing itself of that of all Europe, and adopting without owning it, has seldom, if ever, made use of an American Law-book, recommended by the same language, system, and subject-matter. American translations of Foreign Jurists, on subjects in which the legislature of English Law is extremely deficient, appear to be less known in England than translations of the Laws of China. This veneration on our part, and estrangement on theirs, are infirmities characteristic of both. Our professional bigotry has been counteracted by penal Laws, in some of the States, against the quotation of recent British precedents, as it was once a capital offence, in Spain, to cite the Civil Law, and as the English Common Law has always repelled that excellent code from its tribunals. I cannot think, with the learned Editor of the Law Register, that the English Law-books are a dead expense to the American bar; or that, in his strong phrase, scarcely an important case is furnished by a bale of their Reports. But I de-

* The English reader who is acquainted with the admirable decisions, which have, during the present century, emanated from these Courts, will, doubtless, feel inclined to dispute Mr. Ingersoll's position.

plore the Colonial acquiescence in which they are adopted too often without probation or fitness. The use and respect of American jurisprudence in Great Britain, will begin only when we cease to prefer their adjudications to our own. By the same means we shall be relieved from disadvantageous restrictions on our use of British wisdom; and our system will acquire that level to which it is entitled by the education, learning, and purity of those, by whose administration it is formed.

"In their national capacity, the United States have no common law; but all the original states are governed by that of England, with adaptations. In one of the new States, in which the French, Spanish, and English laws happen to be all naturalized, an attempt at codification from all these stocks is making under legislative sanction. In others, possibly all of the new States, which have been carved out of the old, a great question is in agitation, whether the English common law is their inheritance. Being a scheme of traditional precepts and judicial precedents, that law requires continual adjudications, with their reasons at large, to explain, replenish, and enforce it. Of these reports, as they are termed, no less than sixty-four, consisting of more than two hundred volumes and a million of pages, have already been uttered in the United States; most of them in the present century; and in a ratio of great in-

crease. The camel's load of cases, which is said to have been necessary to gain a point of law in the decline of the Roman Empire, is therefore already insufficient for that purpose in the American. Add to which, an American lawyer's library is incomplete without a thousand volumes of European legists, comprehending the most celebrated French, Dutch, Italian, and German treatises on natural, national, and maritime law, together with all the English Chancery and common law. I have heard of an American lawyer of eminence, whose whole property is said to consist in a large and expensive law library.

"Notwithstanding this mass of literature, the law has been much simplified in transplantation from Europe to America; and its professional as well as political tendency is still to further simplicity. The brutal, ferocious, and inhuman laws of the feudists, as they were termed by the Civilians, (I use their own phrase) the arbitrary rescripts of the civil law, and the harsh doctrines of the common law, have all been melted down by the genial mildness of American institutions. Most of the feudal distinctions between real and personal property, complicated tenures and primogeniture, the salique exclusion of females, the unnatural rejection of the half-blood and anti-nuptial offspring, forfeitures for crimes, the penalties of alienage, and other vices of European jurisprudence,

which nothing but their existence can defend, and reason must condemn, are either abolished, or in a course of abrogation here. Cognisance of marriage, divorce, and posthumous administration, taken from the ecclesiastical, has been conferred on the civil tribunals. Voluminous conveyancing and intricate special pleading, among the costliest mysteries of professional learning in Great Britain, have given place to the plain and cheap substitutes of the old common law. With a like view to abridge and economise litigation, coercive arbitration, or equivalents for it, have been tried by legislative provision; jury trial, the great safeguard of personal security, is nearly universal, and ought to be quite so for its invaluable political influences. It not only does justice between the litigant parties, but elevates the understanding and enlightens the rectitude of the community. Sanguinary and corporal punishments are yielding to the interesting experiment of penitential confinement. Judicial official tenure is mostly independent of legislative interposition, and completely of executive influence. The jurisdiction of the courts is far more extensive and elevated than that of the mother country. They exercise among other high political functions, the original and remarkable power of invalidating statutes, by declaring them unconstitutional; an ascendancy over politics never before, or elsewhere

asserted by jurisprudence, which authorises the weakest branch of a popular government to annul the measures of the strongest. If popular indignation sometimes assails this authority, it has seldom, if ever, been able to crush those who have honestly exercised it; and even if it should, though an individual victim might be immolated, his very martyrdom would corroborate the system for which he suffered. Justice is openly, fairly, and purely, administered, freed from the absurd costumes and ceremonies which disfigure it in England. Judicial appointment is less influenced by politics, and judicial proceedings more independent of political considerations.

"The education for the bar is less technical, their practice is more intellectual, the vocation is, relatively at least, more independent in the United States than in Great Britain. Here, as there, it is a much frequented avenue to political honours. Of the five Presidents of the United States, four were Lawyers; of the several candidates at present for that office, most, if not all, are Lawyers. But without any public promotion, American society has no superior to the man who is advanced in any of the liberal professions. Hence, there are more accomplished individuals in professional life here, than where this is not the case. Under other governments, patronage will advance the unworthy, and power will oppress the meritorious.

Even in France, where there are, and always have been, lawyers of great and just celebrity, we sometimes see, that for exerting the noblest, and in some countries, the most common duties of their profession, for resisting the powerful, and defending the weak, they are liable to irresponsible arrest, imprisonment, and degradation, without the succour and sanctuary of a free press, and dauntless public sympathy.* In Great Britain, it is true, there is no such apprehension to deter them; and equally true, that professional as well as political dignities are free to all the candidates.

"British jurisprudence itself, too, that sturdy and inveterate Common Law, to which Great Britain owes many of the great popular, conservative principles of her Constitution, even these have been impaired by long and terrible wars, during which, shut up in their impregnable island, the offspring of Alfred and of Edward, infusing their passions, their politics, and their prejudices into their laws, have wrenched them to their occasions. The distinguishing attributes and merits of the Common Law are, that it is popular and mutable, takes

* In addition to Mr. Ingersoll's observations on this subject, we beg leave to refer our readers to a work lately published at Paris, under the title *De l'Admistration de la Justice en France et de l'Ordre Judiciaire.*

its doctrines from the people, and suits them to their views. While the American Judiciary enforces this system of jurisprudence, may it never let wars, or popular passions, or foreign influences, impair its principles."

This panegyric lies open to many observations, not only from the view which it presents of our English Jurisprudence, but likewise from the frequently erroneous impressions which it is calculated to convey, with regard to the present state of American Law. In consequence, however, of the length of the extract, we shall defer any remarks upon it at present.

THE TRIAL OF ELIZABETH CANNING, FOR PERJURY.

This very remarkable trial commenced on the 29th of April, 1754, and occupied seven days. It involves one of the most inexplicable mysteries, and the most positive, yet utterly irreconcileable evidence, on the question of an *alibi*, to be found in the history of our own criminal law, or, perhaps, in that of any other country.

Canning stood indicted for perjury, in the evidence given by her on the prosecution of Mary Squires and Susannah Wells, for an assault and felony committed by them on her, of which they were convicted; but upon doubts arising of the truth of Canning's story, they received a pardon,

and all the circumstances underwent a thorough examination on the trial of Canning herself for perjury. Her story was shortly as follows: On the 1st of January, 1753, about nine at night, two men seized her in Moorfields, robbed her, and, by a blow on the temple, threw her into a fit. Six hours after, she found herself on the highway, dragged along by these men, who took her to the house of Wells, at Enfield Wash, distant about twelve miles; where she arrived half an hour after recovering her senses, about four o'clock in the morning. She there saw Mary Squires and two young women. The former cut off her stays, and, after some abusive language, pushed her up stairs into a hay-loft, a few steps from the kitchen, and shutting the door upon her, threatened to cut her throat, if she heard her stir or move. In this room were a fire-place and grate, no bed or bedstead, nothing but hay to lie upon, a pitcher almost full of water, and about twenty-four pieces of bread, to the amount of a quartern loaf in the whole. Upon this she subsisted during the whole time she remained in the room, which was from Monday, the 2d of January, at four in the morning, till Monday, the 29th, at four in the afternoon. During all that time, she had no stool, nor did she see a human creature, except once she saw somebody look through a crack in the door. On Friday, the 26th of January, she had eaten

up all her bread, and had drank up all her water on Monday, the 29th; on which last day she escaped, by breaking down a board at the inside of a window, eight or ten feet from the ground, from which she jumped down, without hurt, taking with her a bedgown and a handkerchief, which she found in the chimney-grate. She then enquired her way home, without seeking refuge at any house on her way, and arrived at her mother's, in Aldermanbury, at a quarter past ten, and told her friends that her place of confinement was somewhere in the Hertfordshire road, which she learned by seeing a coach go by that frequented that road.

On the trial of Squires and Wells, this story was corroborated by Virtue Hall, one of the young women represented by Canning to have been in the house when she arrived, as to the incidents that occurred subsequent to that point of time. This witness afterwards recanted, and was not brought forward at Canning's trial on either side. The charge against Squires was met by an *alibi*, supported by no less than forty-one witnesses, who trace the progress of Squires, and her son and daughter, from South Parrot, in Dorsetshire, on the 29th of December, 1752, to their arrival at Enfield, on the 24th of January, 1754. All these witnesses speak with the greatest certainty to the person of Squires; and all the facts sworn to are like so many links in a chain, and display a

perfect congruity. One of these witnesses was George Squires, the son of Mary, who seems to have been of weak intellect, and makes a very indifferent figure on his cross-examination.

"After you left Lewes, what is the first town you came to that you did know?—Really I do not know. It is so long ago, I can't tell you.

"I don't ask you the first town from Lewes, but the first town you do remember after you left Lewes?—(No answer.)

"It was not South Parrot, was it?—No, it is not possible I can tell you; I went from thence into Hampshire and Wiltshire. I went through Salisbury.

"Is that the first town you can remember, after you left Lewes, you came at?—No, I went through several, but don't remember their names; I must have went through some; I hope you will excuse me; I hope you will not ask me any more.

"Can you tell the name of any town you went through between Lewes and Salisbury?—No, I cannot.

"Where did you go after you went from Salisbury?—I went to Hendon.

"Where did you go when you went from Hendon?—I went partly by Mear.

"What was the next town when you left Mear?—Really, Sir, I hope you will excuse me; be

pleased to excuse me; I cannot tell, indeed; please to excuse me!"

Other evidence, of the strongest nature, was not wanting to prove the falsehood of Canning's story. There was no lock on the door of the room in which she said she had been confined. She confessed, that she had never attempted to escape till the end of the fourth week of her imprisonment, because the idea never occurred to her; and yet the means of escape through the window were always offered to her. The room, in which she said she had been shut up, did not correspond with the account she had previously given of it, and it was proved, by several witnesses, that this room was inhabited, during the whole time of her alleged solitary confinement, by a labourer and his wife.

A formidable body of witnesses was produced for the defence. Canning, it appears, was certainly missing from the 1st January to the 29th of the same month, when she suddenly entered her mother's house, about a quarter after ten at night, in a most deplorable condition; her hands black and blue; her face bloated; her ear bloody; and her clothes in a wretched state. The keeper of the turnpike at Stamford-hill, which leads from Moorfields to Enfield, swore, that on the 1st of January, about ten or eleven at night, he heard a sobbing cry, and saw two men dragging a woman

between them over a stile; and several witnesses deposed, that on the evening of the 29th of January, they saw a miserable-looking woman, on the same road, enquiring her way to London. These periods corresponded with the abduction and the return of Canning. Then are called more than twenty witnesses, who swear positively to their knowledge of Squires, and to their having seen and spoken with her at various periods, at and in the vicinity of Enfield, between the first and twenty-fourth days of January, on which latter day, according to the story of her own witnesses, she arrived at Mrs. Wells's. Several old women were put into the box, to prove the presence of Squires at Enfield, whose ignorance would not bear cross-examination, and whose testimony, where so much depended on accuracy of dates, was not to be greatly relied on. Margaret Richardson was cross-examined by Mr. Willes.

"Do you know which is Old Christmas-day, and which is New Christmas-day?—You must tell me; my memory is not so good.

"Which comes first?—Why, the New Christmas-day.

"How many days difference?—Some call it nine; but it may be more.

"How old are you, good woman?—I don't know justly.

"What day of the week was Old Christmas-

day?—It was of a Tuesday or Wednesday; I can't remember which.

"Is Christmas-day Holy Thursday or Good Friday?—I can't resolve no such thing; I am no scholar; I can't pretend to know such things.

"What month is Christmas-day in?—I can't say that neither, because you put me to a stop.

"Is it the 25th of February?—I don't know justly, indeed.

Mr. Nares. "You put the poor old woman in a hurry.

Recorder. "Don't be affrighted. Can you tell what month Christmas is in?—I cannot.

"In what season of the year is it?—To be sure I can tell that; it is in winter."

Such are the main points of this most perplexing case, which gave rise to a prodigious popular clamour. The pamphlets published on each side of the question would almost compose a library, and were written in a spirit of the utmost virulence and exasperation. Families were divided on the subject. It became a source of division between husbands and wives, children and parents. The trial, as was observed by the Recorder, was carried on by different sets of people, who interested themselves in it with uncommon zeal, and whose passions led them into the greatest extremities and highest extravagances. And this singular trial had as singular a termination, for

the Jury, who had certainly a knotty point to determine, seem, after all, to have given a verdict contrary to their real intention. The leaning of the Recorder, in his address to the Jury, is evidently against the prisoner. At twenty minutes past twelve in the morning, the Jury withdrew to consider their verdict, and returned at fifteen minutes after two, bringing in their verdict, "Guilty of perjury, but not wilful or corrupt." The Recorder told them, that he could not receive their verdict, because it was partial, and they must either find her guilty of the whole indictment, or else acquit her; upon which they retired again for twenty minutes, and then returned their verdict, "Guilty of wilful and corrupt perjury." A new trial was moved for, on the ground that two of the Jury dissented from the verdict. These two men made affidavits, that they considered Canning to have been mistaken in some points; but not to have wilfully perjured herself, and at their instigation the first verdict was carried in. When the Jury were directed to reconsider it, they would have acquitted her; but the foreman told them, that after having once found her guilty of perjury, they could not return a verdict of not guilty. And the deponents say, that they would not have joined in the verdict had they known that it is the act of the mind, and not an undesigned mistake, that constitutes the crime of per-

jury! The application for a new trial was, however, rejected, and, notwithstanding the Jury recommended her to mercy, Canning was transported, in August, 1754, to New England. After her conviction she persisted in her story, "and did, in the most serious manner, and with the strictest regard to truth, declare, that she remained fully persuaded, and well assured, that Mary Squires was the person who robbed her, and that the house of Susannah Wells was the place where she was confined twenty-eight days." In the Gentleman's Magazine for August, 1773, it is stated, that Canning died at Weathersfield, in Connecticut, on the 22d July, in that year. The account of her death in the Magazine, is accompanied with the observation, "that, notwithstanding the many strange circumstances of her story, none is so strange, as that it should not be discovered in so many years, where she had concealed herself during the time she had invariably declared she was at the house of Mother Wells." (*State Trials, vol.* xix. *p.* 283.)

SPECIAL PLEADING.

Lord Mansfield was an avowed enemy to Special Pleading; or, perhaps, more correctly speaking, to *Special Pleaders*; but it is only fair to acknowledge, that another very great man is a warm advocate for it. Sir William Jones, in his Prefatory Discourse to the Translation of Isæus, thus expresses

himself: "I shall not easily be induced to wish for a change of our present forms, how intricate soever they may seem to those who are ignorant of their utility. Our science of Special Pleading is an excellent logic; it is admirably calculated for the purpose of analysing a cause, of extracting, like the roots of an equation, the true points in dispute, and referring them, with all imaginable simplicity, to the court or jury; it is reducible to the strictest rules of pure dialect; and if it were scientifically taught in our public seminaries of learning, would fix the attention, give a habit of reasoning closely, quicken the apprehension, and invigorate the understanding, as effectually as the famed peripatetic system; which, however ingenious and subtle, is not so honourable, laudable, or profitable, as the science in which Littleton exhorts his sons to employ their courage and care. It may unquestionably be perverted to very bad purposes; but so may the noblest arts, and even eloquence itself, which many virtuous men have, for that reason, denied; there is no fear, however, that either the *contracted fist*, as Zeno used to call it, or the *expanded palm*, can do any real mischief, while their blows are directed and restrained by the superintending power of a court."

THE LAST DAYS OF LORD KEEPER WILLIAMS.

"From the heavy time of the King's (Charles I.)

death, he rose every midnight out of his bed, and, having nothing but his shirt and waistcoat upon him, kneeled on his bare knees, and prayed earnestly and strongly one quarter of an hour before he went to his rest again, * * *. He observed the season of midnight, because the scriptures speak of Christ's coming to judge the quick and the dead at midnight. It is true, according to the motion of the sun and stars, it will be day as well as night, that is, cloudy darkness over all the earth. The matter of his prayer was principally this:—*Come, Lord Jesus, come quickly, and put an end to these days of sin and misery.* So much I learned from himself, and so report it. His days were consumed in heaviness, as his nights in mourning. Facetiousness, in which he was singular, came no more out of his lips, he ceased from discourse, from company as he could, and nothing could hale him out of this obscurity. Such another condoler for his King, worthy Spottswood remembers, (*Hist. p.* 106.) That Will. Elphelston, Bishop of Aberdeen, hearing of the unfortunate death of K. James IV. at Floyden, was never afterwards perceived to laugh, nor willingly did he hear anything that sounded to mirth or gladness. Mourning for the dead profits not, yet a tender nature is liberal of it, and will pay more than it needs. Says Sophocles, 'If tears would call the dead again, Ὁ χρυσος [illegible]

κτῆμα τῷ κλαίειν αν ἦν, they would be more valuable than gold.' But a bucket of them will not empty the Dead Sea of grief. Wise Solon, in Laertius, taking on heavily for his son's death, says his companion to him, 'Grief will do you no good.' 'And that makes me grieve the more,' says Solon, 'because it will do me no good.' It is a very weak passion, and yet often too strong for reason. The Archbishop remained very silent in his dejected heaviness, and enquired after no news, except that sometimes he would lift up his head, and ask what was become of the King's Triers, *Baanah* and *Rachab*, especially, *Cromwell* and *Bradshaw*; looking for some remarkable judgment of God to come down upon them; which they have escaped for the great trial of good men's patience; and a gleam of felicity is granted to them here, that passing from extremity to extremity, their pain may be the sharper when they awake to judgment." (*Hacket's Life of Williams, Part* ii. *p.* 226.)

SIR WILLIAM JONES'S CHARACTER OF DUNNING.

We have already given the character of Lord Ashburton, which Sir Nathaniel Wraxall has drawn; we shall now present Sir William Jones's sketch of the same celebrated man. To Lord Ashburton Sir William was indebted for his seat on the Indian Bench, and for many other kind-

nesses, which he acknowledges in the strongest language, in a letter, addressed to his Lordship from India. "As to you, my dear Lord, we consider you as the spring and fountain of our happiness, as the author and parent, (a Roman would have added, what the coldness of our northern language will hardly admit,) the *God* of our fortune." (*Works, vol.* ii. *p.* 6.)

"The public are here presented not with a fine picture, but a faithful portrait, with the character of a memorable and illustrious man, not in the style of panegyric on a monument, but in the language of sober truth, which friendship itself could not induce the writer to violate.

"John Dunning, (a name to which no title could add lustre,) possessed professional talents, which may truly be called inimitable, for, besides their superlative excellence, they were peculiarly his own; and as it would scarcely be possible to copy them, so it is hardly probable that nature or education will give them to another. His language was always pure, always elegant; and the best words dropped easily from his lips into the best places, with a fluency at all times astonishing, and when he had perfect health, really melodious; his style of speaking consisted of all the turns, oppositions, and figures, which the old rhetoricians taught, and which Cicero frequently practised; but which the austere and solemn spirit of De-

mosthenes refused to adopt from his first master, and seldom admitted into his orations, political or forensic.

"Many at the bar, and on the bench, thought this a vitiated style; but though dissatisfied as critics, yet, to the confusion of all criticism, they were transported as hearers. That faculty, however, in which no mortal ever surpassed him, and which all found irresistible, was his wit. This relieved the weary, calmed the resentful, and animated the drowsy; this drew smiles even from such as were the objects of it; scattered flowers over a desert; and, like sun-beams sparkling on a lake, gave spirit and vivacity to the dullest and least interesting cause. Not that his accomplishments as an advocate, consisted principally in volubility of speech, or liveliness of raillery. He was endued with an intellect sedate, yet penetrating, chaste, yet profound, subtle, yet strong. His knowledge, too, was equal to his imagination, and his memory to his knowledge. He was no less deeply learned in the sublime principles of jurisprudence, and the particular laws of his country, than accurately skilled in the minute but useful practice of all our different courts. In the nice conduct of a complicated cause, no particle of evidence could escape his vigilant attention, no shade of argument could elude his comprehensive reason. Perhaps the vivacity of his imagination sometimes

prompted him to sport where it would have been wiser to argue; and, perhaps, the exactness of his memory sometimes induced him to answer such remarks as hardly deserve notice, and to enlarge on small circumstances, which added little to the weight of his argument; but those only who have experienced, can in any degree conceive the difficulty of exerting all the mental faculties in one instant, when the least deliberation might lose the tide of action irrecoverably. The people seldom err in appreciating the character of a speaker, and those clients who were too late to engage DUNNING on their side, never thought themselves secure of success; while those against whom he was engaged, were always apprehensive of a defeat.

"As a lawyer, he knew that Britain could only be governed happily on the principles of her constitution, or public law; that the legal power was limited, and popular rights ascertained by it; but that the aristocracy had no other power than that which too naturally results from property, and which laws ought rather to weaken than fortify: he was, therefore, an equal supporter of just prerogative and of national freedom, weighing both in the noble balance of our recorded constitution. An able aspiring statesman, who professed the same principles, had the wisdom to solicit, and the merit to obtain, the friendship of this great man, and a connexion, planted ori-

ginally on the firm ground of similarity in political sentiments, ripened into personal affection, which nothing but death could have dissolved or impaired. Whether in his ministerial station he might not suffer a few prejudices insensibly to creep on his mind, as the best men have suffered because they were men, may admit of a doubt; but if ever prejudiced, he was never uncandid, and though pertinacious in all his opinions, he had great indulgence for such as differed from him.

"His sense of honour was lofty and heroic; his integrity stern and inflexible; and though he had a strong inclination for splendour of life, with a taste for all the elegancies of society, yet no love of dignity, of wealth, or of pleasure, could have tempted him to deviate, in a single instance, from the straight line of truth and honesty. He carried his democratical principles even into social life, where he claimed no more of the conversation than his just share, and was always candidly attentive, when it was his turn to be hearer. His enmities were strong, yet placable; but his friendships were eternal; and if his affections ever subdued his judgment, it must have been in cases where the fame or interest of a friend was nearly concerned. The veneration with which he constantly treated his father, whom his fortunes and reputation had made the happiest of mortals, could be equalled only by the amiable tenderness

which he shewed as a parent. He used to speak with wonder and abhorrence of Swift, who was not ashamed to leave a written declaration, 'that he could never be fond of children,' and with applause of the Caliph, who, on the eve of a decisive battle, which was won by his valour and wisdom, amused himself in his tent with seeing his children ride on his scymitar, and play with his turban, and dismissed a general, as unlikely to treat the army with lenity, who durst reprove him for so natural and innocent a recreation.

"For some months before his death, the nursery had been his chief delight, and gave him more pleasure than the cabinet could have afforded; but this parental affection, which had been the source of so much felicity, was, probably, a cause of his fatal illness. He had lost one son, and expected to lose the other, when the author of this painful tribute to his memory parted from him, with tears in his eyes, little hoping to see him again in a perishable state. As he perceives, without affectation, that his tears now steal from him, and begin to moisten the paper on which he writes, he reluctantly leaves a subject, which he could not soon have exhausted, and when he also shall resign his life to the great Giver of it, he desires no other decoration of his humble grave-stone, than this honourable truth:

"With none to flatter, none to recommend,
DUNNING approved, and marked him as a friend."

ON THE USE OF TORTURE IN JUDICIAL PROCEEDINGS.*

Some highly curious facts relative to this subject, are contained in Mr. Ellis's recent publication of Original Letters. We there find "a Warrant from Queen Elizabeth to Sir Thomas Smith and Dr. Wilson, for putting two of the Duke of Norfolk's servants to the rack."

"ELIZABETH, R. *By the Queene.*

"Right trusty and well-beloved, we grete you well, and fyndyng in the traytorous attempts lately discovered, that neither Barker nor Bannister, the Duke of Norfolk's men, have bettered their knolledg, neither will discover the same without torture; forasmuch as the knolledg hereof concerneth our suerty and estate, and that they have untruely allredy answered, We will, and by warrant hereof, authorise you to procede to the furder examynation of them uppon all poynts that you can thynk by your discretions mete for knolledg of the truth, and they shall not seme to you to confess playnly their knolledg, then We warrant you to cause them both, or ether of them, to be brought to the rack; and first to move them with feare thereof to deale playnly in their answers, and if that shall not move them,

* Continued from vol. i. p. 160.

then you shall cause them to be putt to the rack, and to find the tast thereof, untill they shall deale more playnly, or untill you shall think mete. And so we remitt the whole proceedyng to your furder discretion, requiryng you to use speed herein, and to require the assistance of our Lieutenant of the Toure. Gyven under our Signet, the xvth of Septemb. 1571.

" To our trustie and right well beloved Counsellors, Sr. Thomas ——yth, Kt. and to our ——tie and well-beloved Doctor ——son, one of the Masters of our Requestes."

The body of this Warrant is stated by Mr. Ellis to be in the hand-writing of Lord Burleigh, of whose " favourable dealings," with regard to the use of torture, we have already given some account. (*Ante, vol.* i. *p.* 616. *See also Miss Aikin's Memoirs of the Court of Elizabeth, vol.* ii. *p.* 133.)

Two days subsequent to the date of the above letter, Sir Thomas Smith writes thus to Lord Burleigh:

" I suppose we have gotten so much as at this time is like to be had; yet, to-morrow do we intend to bring a couple of them to the rack, not in the hopes to get any thing worthy that pain or fear, but because it is so earnestly commanded to

us. As for Barker, I thynk he hath and will confess so much as his wit will serve him; and yet, as it appeareth, hath been the most doer between the Duke and other foreign practisers. Bannister is somewhat obstinate; but little he knoweth. We send you his, Barker's, Hegford's, and Charles's examinations, more than you have had already. I pray you trust, that to-morrow we will do what we can." (*Murdin's State Papers, p.* 95.)

It is singular, that a writer of Mr. Rose's historical knowledge, should have fallen into so palpable an error as to assert, that the only attempt to exercise torture in England, was a proposition made in Council by Laud, to have Felton put to the rack, (except when a design was laid to introduce the Civil Law, in the reign of Henry VI.) (*Observations on Fox's Historical Work, p.* 181.) An error which he has very imperfectly corrected in a note, where he says, that it afterwards occurred to him, that mention is made in our history of persons having been put to the rack, in order to extort confessions in cases of treason, in Queen Mary's time. How much more general the practice was, the reader has seen.

LORD THURLOW AND SIR THOMAS DAVENPORT.

The late Sir Thomas Davenport, then Mr. Davenport, had been in habits of intimacy with Lord Chancellor Thurlow, and had flattered himself

with the hopes of succeeding to the first valuable appointment in his power to confer; but several good things passing by, the patience and temper of Mr. Davenport gave way. The Chief Justiceship of Chester becoming vacant, he thus shortly wrote to the Chancellor: "The Chief Justiceship of Chester is vacant. Am I to have it?" To which the following laconic and emphatic answer was returned: "*No, by God! Kenyon shall have it.*"

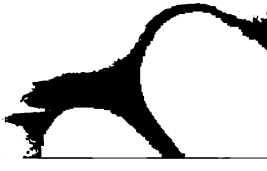
REMARKABLE CASE OF THE MURDER OF JANE NORKOTT.

The Coroner's inquest, on view of the body, and depositions of Mary Norkott, John Okeman, and Agnes, his wife, were inclined to find Jane Norkott a *felo de se,* (a suicide,) for they informed the Coroner and Jury, "that she was found dead in her bed; the knife sticking in the floor, and her throat cut.—That the night before she went to bed with her child, her husband being absent, and that no other person, after such time as she was gone to bed, came into the house, the examinants lying in the outer-room, and they must needs have seen or known if any stranger had come in;" whereupon the Jury gave up to the Coroner a verdict that she was *felo de se:* but afterwards, upon rumour amongst the neighbourhood, and their observation of divers circumstances, which manifested that she did not, nor

could possibly, (according to those circumstances,) murder herself: thereupon the Jury, whose verdict was not yet drawn into form by the Coroner, assented, and desired the Coroner, that the body, which was buried, might be taken up out of the grave, which the Coroner assented unto; and, thirty days after her death, she was taken up, in the presence of the Jury and a great number of people: whereupon the Jury changed their verdict; and the persons being tried at Hertford assizes, were acquitted; but so much against the evidence, that Judge Harvey let fall his opinion, that it were better an appeal were brought, than so foul a murder escaped unpunished.

Accordingly, the child of the deceased Jane Norkott brought an appeal against John Norkott, his father, his grandmother, and aunt, and her husband, Okeman; "and, because the evidence was so strange," says Sir John Maynard, "I took exact and particular notice." And it was as follows:

After the matters above-mentioned had been related on the trial, an ancient and grave person, minister to the parish where the fact was committed, being sworn to give evidence, deposed, "That the body being taken up out of the grave, thirty days after the party's death, and lying on the grass, and the four defendants being present, were required each of them to touch the dead body.



Okeman's wife fell upon her knees, and prayed God to shew tokens of her innocency. The appellant did touch the dead body; whereupon the brow of the dead, which before was of a livid and carrion colour, (in *terminis*, the verbal expression of the witness,) began to have a dew, or gentle sweat, arise on it, which increased by degrees, till the sweat ran down in drops on the face; the brow turned to a lively and fresh colour, and the deceased opened one of her eyes, and shut it again; and this opening the eye was done three several times; she likewise thrust out the ring or marriage finger three times, and pulled it in again; and the finger dropped blood from it on the grass." Sir Nicholas Hyde, Chief Justice, seeming to doubt this evidence, asked the witness, "Who saw this besides you?"

Witness. "I cannot swear what others saw: but, my Lord," (said he,) "I do believe the whole company saw it; and if it had been thought a doubt, proof would have been made of it, and many would have attested with me." Then the witness, observing some admiration in the auditors, spake further: "My Lord, I am minister of the parish, and have long known all the parties; but never had occasion of displeasure against any of them, nor had to do with them, or they with me; but, as I was minister, the thing was wonderful to me: but I have no interest in the matter, but as

called upon to testify the truth, and that I have done." (This witness was a very reverend person, as I guessed, of about seventy years of age; his testimony was delivered gravely and temperately, but to the great admiration of the auditory.) Whereupon, applying himself to the Chief Justice, he said, "My Lord, my brother, here present, is minister of the next parish adjacent, and I am sure saw all done that I have affirmed." Therefore, that person was also sworn to give evidence, and did depose in every point,—"the sweating of the brow,—the change of the colour,—thrice opening the eye,—and the thrice motion of the finger, and drawing it in again;"—only the first witness added, that he himself dipped his finger in the blood which came from the dead body, to examine it, and he swore he believed it was blood.

I conferred afterwards with Sir Edward Powell, Barrister at Law, and others, who all concurred in the observation; and for myself, if I were upon oath, can depose, that these depositions, (especially the first witness,) are truly reported in substance.

The other evidence given against the prisoners, *viz.* the grandmother of the plaintiff, and against Okeman and his wife, "That they confessed they lay in the next room to the dead body that night; and that none came into the house till they found

her dead the next morning; therefore, if she did not murder herself, they must be the murderers. To that end, further proof was made:—

1. "That she lay in a composed manner in her bed, the bed-clothes not at all disturbed, and her child by her in bed.

2. "Her throat cut from ear to ear, and her neck broke. So that if she first cut her throat, she could not possibly break her neck in the bed.

3. "There was no blood in the bed, saving a tincture of blood on the bolster whereon her head lay, but no substance of blood at all.

4. "From the bed's head there was a stream of blood on the floor, which ran along until it ponded in the bendings of the floor, to a very great quantity; and there was also another stream of blood on the floor at the bed's foot, which ponded also on the floor to a very great quantity; but no continuance or communication of blood on either of those two places, from one to the other, neither upon the bed, so that she bled in two several places; and it was deposed, turning up the mat of the bed, that there were clots of congealed blood on the straw of the mat underneath.

5. "The bloody knife was found in the morning sticking in the floor, a good distance from the bed; but the point of the knife, as it stuck, was towards the bed, and the haft from the bed.

6. "There was the print of a thumb and four fingers of a left hand."

Sir Nicholas Hyde, Chief Justice. "How can you know the print of a left hand from the print of a right hand in such a case?"

Witness. "My Lord, it is hard to describe; but if it please that honourable Judge to put his left hand upon your left hand, you cannot possibly place your right hand in the same posture." Which being done, and appearing so, the defendants had time to make their defence; but gave no evidence to any purpose.—The jury departed from the bar; and returning, acquitted Okeman, and found the other three Guilty: who, being severally demanded why judgment should not be pronounced, said nothing but severally, "I did not do it, I did not do it."—Judgment was given, and the grandmother and husband executed; but the aunt had the privilege to be spared execution, being with child. I inquired if they confessed any thing at their execution, but they did not, as I was told. (*State Trials, vol.* x. *Appendix, p.* 29, *A. D.* 1641.)

SIR JAMES WHITELOCKE.

Sir Bulstrode Whitelocke, in his Memorials, gives the following account of the death of his father, Sir James Whitelocke, who was Chief Justice of Chester, and afterwards one of the Judges of the King's Bench, in the reign of James I.

"This Trinity Term my father fell ill of a cold, which so increased upon him, that he was advised to go into the country. Whereupon he took his leave of his brethren, the Judges and Sergeants, and was cheerful with them; but said, *God be with you, I shall never see you again*; and this without the least disturbance or trouble of his thoughts. And, soon after he came into the country, on the 22d day of June, he died; and in his death the King lost as good a subject, his country as good a patriot, the people as good a judge, as ever lived. All honest men lamented the loss of him. No man in his age left behind him a more honoured memory. His reason was clear and strong, and his learning deep and general. He had the Latin tongue so perfect, that sitting Judge of assize at Oxford, when some foreigners, persons of quality, being there, and coming into Court to see the manner of our proceedings in matters of justice, this Judge caused them to sit down, and briefly repeated the heads of his charge to the Grand Jury in good and elegant Latin, and thereby informed the strangers and the scholars of the ability of our Judges, and the course of our proceedings in matters of law and justice. He understood the Greek very well, and the Hebrew; and was versed in the Jewish Histories, and exactly knowing in the history of his own country, and in the pedigree of most persons of honour and

quality in the kingdom; and was conversant in the studies of antiquity and heraldry. He was not by any excelled in the knowledge of his own profession of the Common Law of England, wherein his knowledge of the Civil Law, whereof he was a graduate in Oxford, was a help to him. His learned arguments, both at the bar and bench, will confirm this truth."

PROJECTS TO REFORM THE LAW.

To the observations already made on this subject, (*see vol.* i. *p.* 10,) the reader is requested to subjoin the following additional matter.

The author of the "Characters of C. J. Fox," (Dr. Parr,) after noticing the plan proposed by Sir Matthew Hale, for amending the Law, observes, "These are excellent regulations. The reform, which I hope will one day or other be accomplished in our penal code, is so extensive, that it cannot be effected by the authority of Courts and Judges without troubling Parliament. My wish is, that sages of the law should not be employed in it exclusively; that the Committee should consist not only of Members in both Houses of Parliament, but of able Lawyers, who are not in Parliament; that some of the Judges should form a part of the Committee, and that when the code is brought before the Lords, and while the merits of it are debating, the Judges should attend

in their places, and give their opinions. After all, if the business were undertaken seriously, it would be easy to adjust any difference upon the duties which are to be assigned to the Judges. So again, I would gladly give up any opinion upon reforming the whole code at once, if I were convinced that the legislature were earnestly bent upon revising and reforming every part of it *seriatim*." (*Characters, &c. vol.* ii. *p.* 498.)

The same learned writer also observes, "I wish, as Mr. Barrington does, men in Parliament to have the assistance of Lawyers who are not in Parliament. They may bring equal abilities to the task, and, perhaps, in some cases, they may be able to devote more time to it. But, I think, that the labours of both will be facilitated, and their regulations improved, by the farther assistance of studious persons, whose talents have long been employed on the general science of jurisprudence, whose legal knowledge is accompanied by extensive reading in history, and by a spirit truly philosophical, and whose minds are wholly exempt from those prejudices which always arise, more or less, from professional pursuits, thoughts, and actions. It is plain that Mr. Barrington believed many amendments in our penal statutes to be necessary, and from the multiplicity and variety of the subjects which must be discussed by those who would reform them, I am

led to think, that a general repeal, followed by a general re-enactment, would be more easy and more efficacious than a series of separate declaratory statutes. When the whole body of the code was under contemplation, it would be more practicable, not only according to the opinion of Covarravias, to observe the rule of distributive justice in different species or degrees of the same crime, but to introduce the same measure of distributive justice between one crime and another." (*Vol.* ii. *p.* 330.)

In pursuing this subject the following details, relative to the formation of the French code, will not, probably, be thought misplaced. They are borrowed from the North American Review for July, 1821, where they form part of an able article on an American Translation of Pothier's Maritime Contracts.

"The Revolution came and swept away this vast accumulation of laws. To supply its place, temporary decrees were enacted by the different legislatures. The project of a general Civil Code was first drawn up by Cambaceres, under the Republic, and before the return of Bonaparte from Egypt. On the accession of the latter to the first Consulship, his ardent and restless mind was turned to this important subject, and he aspired to combine the fame of the legislator with the glory which he had acquired in arms. The same object

had before occupied the attention of the different National Assemblies which so rapidly succeeded each other; but they were too much distracted by external danger and domestic faction to mature a work, to accomplish which required either the tranquillity of peace and social order, or the power of a single will. After the return of the First Consul from the field of Marengo, he appointed a Board of Commissioners to draw up the plan of a code, which should supersede all the pre-existing laws concerning private civil rights. It consisted of MM. Portalis, Tronchet, Bijot, Preamenou, and Malleville, all eminent and experienced lawyers of the old school, who produced the *projet de Code Civil*, which was printed and submitted to discussion in a mode adapted to free it from imperfections, to remove the objections to its general plan, to simplify its provisions, and render them more explicit, and produce the most perfect model of legislation the world had yet seen. The Revolution, which had levelled in the dust almost all the social institutions of France, without discriminating the good from the evil, rendered the task comparatively easy. The innumerable customs of the provinces had disappeared; and the multitude of royal ordinances was superseded by decrees of different National Assemblies, which had not yet gained that reverence and strength which time alone can give to the works of man. From this

mass of ruins the legislator might select such materials as he thought fit for the construction of his new edifice. The Roman law was alone left, having the efficacious authority of a code of *written reason;* an authority which it must always command wherever it has been once known and established. It furnished an inexhaustible repository of legal principles, adapted to the wants of a highly civilized and polished state of society, and had no small pretensions to be considered as the universal code of Europe. From this source, then, from the ancient customary law of France, and especially from the works of Pothier himself, they drew the materials of their new creation.

"After this work had been prepared, it was submitted to all the Courts of Appeal, who made their observations upon the plan, which were also printed, and the whole was then subjected to the reversion of the Council of State. Each book was then separately submitted to the legislative body for its adoption, accompanied with an *exposé des motifs.* These *observations* of the judges, the *procés verbal* of the deliberations of the Council of State, and the *motifs,* form an excellent commentary upon the text of the Code. *The Code de Commerce,* which was principally compiled from, and includes the subject matters of, the Commercial Ordinance of 1673, and the Marine Ordinance of 1681, was prepared in a similar

manner; and after these succeeded the *Code de Procedure Civil*, the *Code Penal*, and the *Code de Procedure Criminelle*. These still form, with a very few alterations, the law of France; and certainly, if despotic authority exerted for the accomplishment of beneficent designs, can compensate for the miseries inflicted by military ambition, the fame of Napoleon must in some degree be justified from the imputation of having wielded his power only for the destruction of mankind."

SIR THOMAS MORE AND ERASMUS.

"It is reported that he who conducted Erasmus to England, procured that he and Sir Thomas More should first meet together in London, at the Lord Mayor's table, neither of them knowing each other. And in the dinner time they chanced to fall into argument, Erasmus still endeavouring to defend the worser part; but he was so sharply set upon and opposed by More, that, perceiving that he was now to argue with a readier wit than ever he had before met withal, he broke forth into these words, not without some choler, *Aut tu Morus es, aut nullus*; whereunto Sir Thomas readily replied, *Aut tu es Erasmus aut Diabolus*; because at that time he was strangely disguised, and had sought to defend impious propositions; for although he was a singular humanist, and one that could utter his mind in a most eloquent

phrase, yet he had always a delight to scoff at religious matters, and find fault with all sorts of clergymen. He took a felicity to set out sundry commentaries upon the Fathers' works, censuring them at his pleasure, for which cause he is termed *Errans mus*, because he wandereth here and there in other men's harvests; yea, in his writings, he is said to have hatched many of those eggs of heresy which the Apostata Friar Luther had before laid; not that he is to be accounted an heretic, for he would never be obstinate in any of his opinions; yet would he irreligiously glance at all antiquity, and find many faults with the present state of the church. Sir Thomas, in success of time, grew less affectionate unto him, by reason he saw him still fraught with much vanity and inconstancy in respect of religion: as when Tindall objecteth unto Sir Thomas, that his darling Erasmus had translated *church* into *congregation*, and *Priest* into *Elder*, even as himself had done, Sir Thomas answered thereto, *If my darling Erasmus hath translated those places with the like wicked intent that Tindall hath done, he shall be no more my darling, but the devil's darling.* Finally, long after, having found in Erasmus's works many things necessary to be amended, he counselled him as his friend, in some later book of retractations, to correct in his writing what he had unadvisedly written in the heat of youth. But he,

who was far different from St. Augustine in humility, would never follow his counsel; and therefore he is censured by the church for a busy fellow; many of his books are condemned, and his opinions accounted erroneous, though he always lived a Catholic priest, and hath written most sharply against all those new Gospellers who now began to appear in the world; and, in a letter to John Fabius, Bishop of Vienna, he saith, that he hated those seditious opinions, with the which at this day the world is miserably shaken; neither doth he dissemble, saith he, being so addicted to piety, that if he incline to any part of the balance, he will bend rather to superstition than to impiety; by which speech he seemeth, in doubtful words, to tax the church with superstition, and the new apostolical brethren with impiety." (*More's Life of More.*)

See some observations upon this passage in Jortin's Life of Erasmus, *vol.* i. *p.* 177.

SONNET TO G. HARDYNGE, ESQ.

Of Mr. Hardynge we have already given some account, (*Ante, vol.* i. *p.* 177.) The following sonnet was addressed to him by Sir William Jones.

HARDYNGE, whom Camden's voice and Camden's fame
To noble thoughts, and high attempts excite,
Whom thy learned sire's well-polish'd lays invite

To kindle in thy breast, Phœbæan flame;
Oh rise; oh! emulate their lives and claim
The glorious meed of many a studious night,
And many a day spent in asserting right,
Repressing wrong, and bringing fraud to shame.
Nor let the glare of wealth, or pleasure's bowers,
Allure thy fancy. Think how Tully shone,
Think how Demosthenes, with heavenly fire,
Shook Philip's throne and lightened o'er his towers.
What gave them strength? Not eloquence alone,
But minds elate above each low desire.

SIR WILLIAM JONES'S PROFESSIONAL LIFE.

It is singular that we should meet in our legal annals with three celebrated men who have enjoyed the name and title of Sir William Jones. The first, the author of the Reports, who held a seat on the Bench in the reign of Charles I.; the second, Attorney General for a short period during the reign of Charles II.; and the third, "Linguist Jones," the subject of the present brief notice.

He appears to have been designed for the Bar from an early period. It was strongly recommended by Sergeant Prime, and other legal friends of his mother, that young Jones should be placed, at the age of sixteen, in the office of some eminent special pleader. Even at this early age the juvenile student had the curiosity to peruse the

Abridgment of Coke's Institutes by Ireland, with so much attention, that he is stated to have frequently amused the legal friends of his mother, by reasoning with them on old cases, generally supposed to be confined to the learned of the profession. The Law, however, at that time, observes his biographer, had little attraction for him; and he felt no inclination to renounce his Demosthenes and Cicero for the pleadings in Westminster Hall. His disgust to the study of the law had also been particularly excited by the perusal of some old and inaccurate abridgments of law cases in barbarous Latin. This disinclination probably induced Mrs. Jones to reject the advice of the learned Sergeant, and her son was accordingly sent to the University. The progress which he made in so many various branches of literature and science, and the attachment which he imbibed for those pursuits, no doubt tended to indispose his mind for the confined and severe labours which the profession of the law exacts. It was not until he had determined to resign the charge of Lord Althorp's education, in the year 1770, at the age of twenty-four, that Mr. Jones became a member of the Temple; but he did not on this occasion desert his former studies. "On my late return to England," says he in a letter to his friend Reviczki, "I found myself entangled, as it were, in a variety of important considera-

tions. My friends, companions, relations, all attacked me with solicitations to banish poetry and oriental literatnre for a time, and apply myself to oratory and the study of the law, in other words, to become a Barrister, and pursue the track of ambition. Their advice, in truth, was conformable to my own inclinations; for the only road to the highest stations in this country is that of the law, and I need not add how ambitious and laborious I am."

In another letter, written in the same year, (1771,) addressed to Mr. Wilmot, we trace the progress of his studies, "I have just begun to contemplate the stately edifice of the Laws of England,—

"The gather'd wisdom of a thousand years."—if you will allow me to parody a line of Pope. I do not see why the study of the law is called dry and unpleasant; and I very much suspect that it seems so to those only who would think any study unpleasant which required great application of the mind and exertion of memory. I have read most attentively the two first volumes of Blackstone's Commentaries, and the two others will require much less attention. I am much pleased with the care he takes to quote his authorities in the margin, which not only give a sanction to what he asserts, but point out the sources to which the student may apply for more

diffusive knowledge. I have opened two common place books, the one of the law, the other of oratory, which is surely too much neglected by our modern Speakers. * * * But I must lay aside my studies for about six weeks, while I am printing my grammar, from which a good deal is expected; and which I must endeavour to make as perfect as a human work can be. When that is finished I shall attend the Court of King's Bench very constantly, and shall either take a lodging in Westminster, or accept the invitation of a friend in Duke Street, who has made me an obliging offer of apartments."

That Mr. Jones's more elegant pursuits encroached upon the moments which would otherwise have been devoted to his legal studies, is very evident from the foregoing passage; and from another letter, written in the same year, we find that he was not without apprehensions of his professional character suffering in consequence of his reputation as a man of letters. "As to the years in which the poems were written," he observes, "they are certainly of no consequence to the public; but (unless it be very absurd) I would wish to specify them, for *it would hurt me, as a student at the Bar, to have it thought that I continue to apply myself to poetry; and I mean to insinuate that I have given it up for several years,* which I must explain more fully in the preface.

For a man who wishes to rise in the law, must be supposed to have no other object."

Under these impressions, Mr. Jones, like Sir William Blackstone, in an address to the Muse, expressed his determination to renounce polite literature, and to devote himself entirely to the study of the law. He was called to the Bar in January, 1774, and in the Autumn of the same year, we find him, in a letter to his friend Schultens, expressing his determination to renounce for the next twenty years, all studies but those which were connected with his profession. He then passes a warm eulogium upon the study of the law, and after comparing it with lighter pursuits, tells his correspondent that he prefers its fruitful and useful olive to the barren laurels of literature. "To tell you my mind freely," he adds, "I am not of a disposition to bear the arrogance of men of rank, to which poets and men of letters are so often obliged to submit."

For some time after his being called to the bar, Mr. Jones declined practice, though, in 1775, for the first time, he attended the spring circuit and sessions at Oxford, whether as a spectator or actor his biographer does not inform us. In the following year, he was regular in his attendance at Westminster Hall, and was appointed a Commissioner of Bankrupts, through the interest of Lord Bathurst. We find him also talking of

his "practice at the bar;" and in the summer of the next year (1777,) he writes like one overwhelmed with business. "My law employments," says he, in a letter to Schultens, "attendance in the courts, incessant studies, the arrangement of pleadings, trials of causes, and opinions to clients, scarcely allow me a few moments for eating and sleeping." This intense application at length injured Mr. Jones's health, and he was compelled to visit Bath "for the purpose of recruiting his exhausted spirits and strengthening his stomach;" and upon this occasion, he informs Lord Althorp, that "he had abstained, with some reluctance, from dancing, an amusement which would be too heating for a water-drinker."

In 1778, Mr. Jones gave to the world his Translation of the Orations of Isæus, to which he added, a Dissertation on the Attic Laws of Succession, and on the Forms of Pleading in the Athenian Courts. This publication may be regarded as in accordance with the author's professional pursuits. He had at this time, as we are informed by his biographer, every reason to be satisfied with the proportion of business which fell to his share; and a letter addressed to Lord Althorp in this year, confirms the statement, "The agitation of forensic business," says he, "and the sort of society in which I have been forced to live, afford me few moments of leisure,

except those in which nature calls for perfect repose." About this period, the prospect of a seat on the bench in India first opened itself to Mr. Jones, as we learn from the letter last referred to. "The disappointment," he observes, "to which you allude, and concerning which you say so many friendly things to me, is not yet certain, my competitor is not yet nominated; many doubt whether he will be: I think he will not, unless the Chancellor should press it strongly. It is still the opinion and wish of the bar that I should be the man. I believe the Minister hardly knows his own mind. I cannot legally be appointed till January, or next month at soonest, because I am not a barrister of five years' standing until that time; now, many believe that they keep the place open for me until I am qualified. I certainly wish to have it, because I wish to have twenty thousand pounds in my pocket before I am eight and thirty years old; and then I might contribute, in some degree, towards the service of my country in parliament as well as at the bar, without selling my liberty to a patron, as too many of my profession are not ashamed of doing, and I might be a speaker in the House of Commons in the full vigour and maturity of my age; whereas, in the slow career of Westminster Hall, I should not, perhaps, even with the best success, acquire

the same independent station till the age at which Cicero was killed."

The celebrated riots of 1780, gave Mr. Jones an opportunity of publishing a short legal pamphlet, under the title of *An Inquiry into the legal Mode of suppressing Riots, with a Constitutional Plan of future Defence.* During the same year, his practice was augmented, and he was engaged as counsel in some important cases. "I spoke," says he to the Bishop of St. Asaph, "yesterday in Westminster Hall for two hours and a half, on a knotty point of law, and this morning for above an hour on a very interesting public question; to-morrow I must argue a great cause." About this period he employed himself upon his celebrated Treatise on the Law of Bailments, and projected some other professional works. (*See Ante.*) His attention, however, was still earnestly directed towards an Indian Judgeship, and with this view he undertook the translation of an Arabian Poem, on the Mahommedan Law of Succession to the Property of Intestates. (*See his Works, vol.* viii. *p.* 183.) The attainment of his object was for some time doubtful. "With regard to Asiatic Letters," he observes, in a letter to Gibbon, "a necessary attention to my profession will compel me wholly and eternally to abandon them, unless Lord North (to whom I am already under no small obligation,) should think

me worthy to concur in the improved administration of justice in Bengal, and should appoint me to supply the vacancy on the India Bench." The long expected honour was at last conferred upon him, and in March, 1783, during the administration of Lord Shelburne, he was appointed a Judge of the Supreme Court of Judicature at Fort William, in Bengal, and was knighted on the occasion.

The foregoing notice of Sir William Jones's professional life may, perhaps, be thought trifling; but it is not altogether useless. It will serve to shew, that it is not absolutely impracticable to unite the greatest proficiency in other studies with a sound and practical knowledge of the law, and to attain, notwithstanding that rare and dangerous union, a distinguished rank in the profession.

We shall conclude with some lines on the Death of Sir William Jones, from a well-known poem.

He, too, whom Indus and the Ganges mourn,
The glory of their banks from Isis torn,
In learning's strength is fled, in judgment's prime,
In science temperate, various, and sublime.
To him familiar every legal doom,
The Courts of Athens, or the Halls of Rome,
Or Hindoo Vedas taught; for him the Muse
Distill'd from every flower Hyblæan dews;
Firm when exalted, in demeanour grave;
Mercy and truth were his; he loved to save.

His mind collected; at opinion's shock
Jones stood unmov'd, and from the Christian rock
Celestial brightness burning on his breast,
He saw the star, and worshipped in the East!"
(*Pursuits of Literature, p.* 364, 16*th Edit.*)

A Lawyer, now deceased, a celebrated wag, was pleading before a Scotch Judge, with whom he was upon the most intimate terms. Happening to have a client, a female, of the name of Tickle, defendant in an action, he commenced his speech in the following humourous strain: "Tickle my client, the defendant, my Lord." The auditors, amused with the oddity of the speech, were almost driven into hysterics by the Judge replying,—"Tickle her yourself, Harry, you are as able to do it as I."

THREE JUDICIAL PORTRAITS.

If any of our readers can solve the following enigma, they will accomplish what we have ourselves in vain endeavoured to do. Three Judges of the last century are intended to be represented, but for what individuals in particular the portraits are intended, we are unable to divine. One of them is, probably, Mr. J. Buller. The portraits are drawn by Dr. Parr with that power and spirit for which his pen is remarkable.

"At this very hour do I shrink, when my imagination presents to me the spectres of three furred ἀνδρόκτονοι, in whose abilities, as exercised in trials for capital offences, 'not light, but darkness visible, served only to discover sights of woe.'

"With learning, taste, and genius, which adorned the head, but improved not the heart; one of them was a sober, subtle, inexorable interpreter and enforcer of sanguinary statutes, with a ready memory, keen penetration, barren fancy, vulgar manners, and infuriate passions; another indulged himself in the gibberish of a canting fanatic, and the ravings of an angry scold, before trembling criminals;—with sagacity enough to make the worse appear the better cause to superficial hearers, and with hardihood enough not to profess much concern for the bodies of men, or their souls; the third carried about him an air, sometimes of wanton dispatch, and sometimes of savage exultation, when he immolated hecatombs at the altar of public justice;—armed with 'giant strength,' and accustomed 'to use it like a giant,' these protectors of our persons transferred to thievery that severity which the Court of Areopagus employed only against cut-throats, and they did so where judges were not bound by a *peculiar*, direct, and sacred oath, adapted to the *peculiar character of the tribunal*, and where offenders had not the chance, as among the Athenians, of a

more favourable issue, of appeals to the *Thesmothetæ*, nor that privilege of going before trial into voluntary exile, which, on the first institution of this Court, had been granted to them by legislators, who εἴθ' ἥρωες ἦσαν, εἴτε θεοὶ, οὐκ ἐπέθεντο τοῖς ἀτυχήμασιν ἀλλ' ἀνθρωπίνως ἐπεκούφισαν, εἰς ὅσον ἐγχεκαλῶς, τὰς συμφοράς. (*Demos. Orat. adv. Aristocrat.*)

"If a Βῶμος Ἐλέω like that at Athens had been placed in the avenue to our English Courts, there δικασπόλοι ἄνδρες would have differed from each other in their outward demeanour, and yet have remained equally guiltless of 'bearing the sword in vain.' *Elaphocardius*, upon approaching the hallowed spot, might have paused for a second, winced under a slight stroke of rebuke from the monitor within, and quietly sneaked by on the other side. *Cardamoglyphus* would have wrung his hands, lifted up his eyes to heaven, implored forgiveness to himself as a miserable sinner, and before sun-set would have boasted of 'not being as other men are,' regraters, sabbath-breakers, libertines, and more especially as that execrable criminal who stood before him at the bar. But the steps of *Cynepes* would not have been turned aside to the right hand or to the left; his eye would have darted upon the emblems of the altar with a glare of fierce disdain; he would negligently have swept the base of it with the skirts of his robe; he would have laughed inwardly at

the qualms of one of his compeers, and scoffed without disguise at the mummeries of the others. Happily these arbiters of life and death are now no more: they have left an example not very likely to be imitated by their learned successors, and my hope is, that the mercy which they shewed not to others in this world, may in another world be shewn to them." (*Characters of Fox, vol.* ii. *p.* 344.)

LOCKE'S ADVICE ON THE STUDY OF THE LAW.

Civil Law.

"When he has pretty well digested Tully's Offices, and added to it Puffendorf *de officio hominis et Civis*, it may be seasonable to set him upon *Grotius de Jure belli et pacis*, or which, perhaps, is the better of the two, Puffendorf *de Jure Naturali et gentium*; wherein he will be instructed in the natural rights of men, and the original and foundations of society, and the duties resulting from thence. This general part of Civil Law and History, are studies which a gentleman should not barely touch at, but constantly dwell upon, and never have done with. A virtuous and well-behaved young man that is well versed in the general part of the Civil Law, (which concerns not the chicane of private cases, but the affairs and intercourse of civilized nations in general, grounded upon principles of reason,) understands

Latin well, and can write a good hand, one may turn loose into the world, with great assurance that he will find employment and esteem every where."

Common Law.

"It would be strange to suppose an English gentleman should be ignorant of the laws of his country. This, whatever station he is in, is so requisite, that from a justice of the peace to a minister of state, I know no place he can well fill without it. I do not mean the chicane or wrangling and captious part of the law; a gentleman, whose business is to seek the true measures of right and wrong, (and not the arts how to avoid doing the one, and secure himself in doing the other,) ought to be as far from such a study of the law, as he is concerned diligently to apply himself to that wherein he may be serviceable to the country. And to that purpose, I think the right way for a gentleman to study our law, which he does not design for his calling, is to take a view of our English Constitution and Government, in the ancient books of the Common Law, and some more modern writers, who out of them have given an account of this government; and having got a true idea of that, then to read our history, and with it join, in every king's reign, the laws then made. This will give an insight into the

reason of our statutes, and shew the true ground upon which they came to be made, and what weight they ought to have." (*Locke's Essays on Education, p.* 84. *See also Bishop Burnet's Advice on the same subject, ante, p.* 37.)

DEAN SWIFT AND SERGEANT BETTESWORTH.

The best account of the singular fracas between the Dean and the Sergeant is contained in Sir Walter Scott's Life of Swift, (*p.* 418,) from which it is now borrowed.

"In a Satire, printed in 1733, ridiculing the Dissenters for pretending to the title of 'Brother Protestants and Fellow Christians,' the Dean, among other ludicrous illustrations of their presumption, introduced this simile:

'Thus at the bar the booby B———,
Though half-a-crown o'erpays his sweat's worth,
Who knows in law nor text nor margent,
Calls Singleton his brother Sergeant.'

The blank in the termination of the first couplet indicated Mr. Bettesworth, a Member of Parliament and Sergeant at Law,* remarkable for his

* "The rhyme is said to have been suggested by a casual circumstance: a porter brought a burthen to the Dean's house while he was busy with the poem, and labouring to find a rhyme for this uncommon name, the more anxiously as Bettesworth exulted in the idea of its

florid elocution in the House and at the Bar, who had been very active in promoting those proceedings which Swift regarded as prejudicial to the clergy. Upon reading the lines, he was wrought up to such a height of indignation, that, drawing out a knife, he swore he would with that very instrument cut off the Dean's ears. After this denunciation, he went, in the height of his fury, to the Deanery, and from thence to Mr. Worrall's, where Swift was on a visit. The family were at dinner, and the stranger being shewn into another apartment, the Dean was called out to him. The Sergeant advanced to him with great haughtiness, and said, 'Doctor Jonathan Swift, Dean of St. Patrick's, I am Sergeant Bet—tesworth,' this being his affected mode of pronouncing his name. 'Of what regiment?' answered Swift. After a very angry parley, Bettesworth began to raise his voice, and gave such indications of violence, that Mr. Worrall and the servants rushing in, compelled him to withdraw. The tradition in the Dean's family bears, that

being impossible. The fellow's demand being considered as exorbitant, he wiped his forehead, saying, with the humour of a low Irishman, 'Oh, your Reverence, my sweat's worth half-a-crown.' The Dean immediately caught at the words, 'Aye, that it is, there's half-a-crown for you.' This anecdote is given on the authority of Mr. Theophilus Swift."

Bettesworth actually drew his knife; but the Dean's own narrative, transmitted to the Lord Lieutenant, does not countenance that last excess, only affirming, that, by Bettesworth's own report, he had a sharp knife in his pocket, and a footman attending in the hall, to open the door to one or two ruffians, who waited his summons in the street.* The Dean remained composed and unmoved during this extraordinary scene. It was fortunate for the Sergeant's person, as well as his character, that he did not proceed in his meditated vengeance on the person of an old man, and a clergyman, since the attempt must have been made at the risk of his life. So soon as the news transpired, the inhabitants of that part of Dublin, called the Earl of Meath's Liberty, assembled, and sent a deputation to Swift, requesting his permission to take vengeance on Bettesworth for his intended violence to the patriot of Ireland. Swift returned them thanks for their zeal; but enjoined them to disperse peaceably, and adding a donation of two or three guineas, prohibited them from getting drunk with the money, adding,

* "Various accounts of this interview have been given; but that of the Dean to the Duke of Dorset, immediately after it took place, ought to be preferred." (*Scott's Swift, vol.* xviii. *p.* 244.) The additional circumstances, stated in the version of this story, (*p.* 135, *Ante,*) are grounded on the authority of Mr. Sheridan.

'You are my subjects, and I expect you will obey me.' It is no slight proof of the despotism of his authority, founded as it was, solely upon respect and gratitude, that his defenders complied with his recommendation in both particulars, and peaceably and soberly separated to their dwellings. For some time, however, they formed a guard among themselves for the purpose of watching the Deanery and the person of the Drapier, lest Bettesworth should have adopted any new scheme of vengeance.

"The consequences of this rashness were very serious to Mr. Bettesworth, for not only was he overwhelmed by the Dean and his friends with satire and ridicule,* to which he had shewn himself so keenly sensible; but in the bitterness of his heart he confessed, in the House of Commons, that Swift's satire had deprived him of 1200l. a year."

SIR GEORGE JEFFERIES.

The ensuing anecdotes of Jefferies are borrowed from Mr. Seward's excellent Collections, *vol.* ii. *p.* 85.

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* See "Bettesworth's Exultation." (*Scott's Swift, vol.* x. *p.* 534.) "Epigram inscribed to the Honourable Sergeant Kite." (*p.* 536.) "The Yahoos Overthrown; or, the Kevan Bayle's New Ballad." (*p.* 537.) "On the Archbishop of Cashel and Bettesworth." (*p.* 541.)

"A learned and ingenious collector in London has in his possession the patent for creating this insolent and cruel magistrate Earl of Flint. Jefferies wished to have this title, not as corresponding to his general character, but as having an estate in the County of Flint. Jefferies early distinguished himself by his brutal treatment of prisoners, and of practitioners of the law, whom he disliked. At the end of 'The Ninth Collection of Papers relative to the present juncture of Affairs in England,' 4to. 1698, there is this singular advertisement: 'Lately published, the Trial of Mr. Papillon, by which it is manifest, that the then Lord Chief Justice, (Jefferies,) had neither learning, law, nor good-manners, but more impudence than ten carted whores, (as was said of him by King Charles II.) in abusing all those worthy citizens who voted for Mr. Papillon and Mr. Dubois, calling them a parcel of factious, pragmatical, sneaking, whoring, canting, snivelling, prick-eared, crop-eared, atheistical fellows, rascals, and scoundrels, as in page 19, and other places of the said Trial, may be seen. Sold by Michael Janeway, and most Booksellers.' Yet Jefferies, amidst all his cruelties, was a lover of buffoonery. Sir J. Reresby says, that he once dined with Jefferies, when he was Lord Chancellor, and

that the Lord Mayor was a guest, and some other gentlemen: that Jefferies, according to custom, drank deep at dinner, and called for Mountfort, one of his gentlemen, who had been a comedian, and an excellent mimic, and that to divert the company, adds Sir John, (as he was pleased to term it,) he made him plead before him, in a feigned cause, during which, he aped all the great lawyers of the age, in their tone of voice, and in their action and gesture of body.

"When that exquisite congeries of musical intruments, the present Temple organ, was to be tried previously to its being set up in the church at which it is now placed, Jefferies was the umpire between the merit of it and the organ now in the new church at Wolverhampton, and gave his judgment in favour of the first. Jefferies said of himself, that he was not near so sanguinary on the Western Circuit, as his employer, James the Second, wished him to have been.* On that execrable business, Jefferies exhibited a striking instance of the power of virtue upon a mind the most vicious and profligate. He had no sooner retired to his lodgings at Taunton to prepare himself for the opening of his bloody commission, than he was called upon by the minister of the church of

* This question will be examined more at large in a subsequent part of these volumes.

St. Mary Magdalen, in that town, who, in a very mild manner, remonstrated with him upon the illegality and barbarity of that business, upon which he was then going to proceed. Jefferies heard him with great calmness, and, soon after he returned to London, sent for him, and presented him to a stall in the Cathedral of Bristol. Jefferies was committed to the Tower on the flight of James II. from England. He is said to have died in that fortress of a disease occasioned by drinking brandy, to lull and to hebetate the compunctions of a terrified conscience."

JUDICIAL CORRUPTION.

To the illustrations of this subject in a former volume, (*Ante, vol.* i. *p.* 223,) the following passage may be added, which proves the extent to which Judicial Corruption had attained in the reign of James I.

"Among the qualities of a good judge, there is one remaining and fit to bring up the rear, which the king looked upon as verily to be presaged in his new officer, (Lord Keeper Williams,) an hand clean from corruption and taking gifts *which blind the eyes of the wise and pervert the words of the righteous,* (*Deut. c.* 16, *v.* 19.) 'Twas loudly exclaimed, (and the king was ashamed to have so far mistaken the persons,) that there were sucking horse-leeches in great places. Things

not to be valued at money were saleable, and what could not gold procure? As Menander writes, Φιλοι δικασαι, μαρτυρες, μονον διδου: αυτους γαρ εξεις τους Θεους υπηρετας. That is, friends and judges, and witnesses, you may have them for a price: nay, such as sit in the place of God, will serve you for such wages. The wise king having both prevailed by monitions and menaces against this sordid filthiness, cast his liking upon a man whom he might least suspect for gripleness and bribery. The likeliest indeed, of all others, to shake this viper from his hand, and to be armed with a breastplate of integrity against the mammon of iniquity; for he was far more ready to give than to take, to oblige than to be beholding, *magis illud laborare ut illi quamplurimi debeant*, as Salust says of Jugurtha. He was well descended, of fortunate and ancient times, and had made his progress to advancements by steps of credit; a good bridle against base deviations. What, then, made an unsavoury historian call him Country Pedant? A reproach with which H. L. doth flirt at him in his History of King Charles, a scornful untruth. So I shake off this bar and return to the reverend Dean, who was in a function of holy calling next to God; among them I know all have not been incorrupt. *The sons of Samuel turned aside after lucre, and took bribes and perverted Judgment*, 1. *Sam. c.* 8. *v.* 3. But commonly I trust they do

not forget what a scandal it is, if God's stewards turn the devil's rent-gatherers. He was also unmarried, and so unconcerned in the natural impulsion of avarice to provide for wife and children. Our old moral men touched often upon this string, that *Justice is a Virgin.* Παρθενος εστι δικη, says Hesiod, and therefore fit to be committed to the trust of a virgin magistrate. He was never sullied with suspicion, that he loved presents, not so much as *Gratuidad di Guantes,* as the Spaniard's phrase is; but to go higher, they are living that know what sums of value have been brought to his secretary's, such as might have swayed a man that was not impregnable; and with how much solicitousness they have been requested to throw them at his feet for favours already received; which no man durst undertake, as knowing assuredly it would displace the broker and be his ruin. And it was happy for him when, five years after, lime-hounds were laid close to his footsteps, to hunt him, and every corner searched to find a little of that dust behind his door. But it proved a dry scent to the inquisitors, for, to his glory and the shame of his enemies, it could never appear that the least bird-lime of corruption did stick to his fingers." (*Hacket's Life of Lord Keeper Williams, Part* i. *p* 54.)

REPORTS OF MASTERS IN CHANCERY.

"They feigned a tale, principally against Masters' reports in the Chancery, that Sir Nicholas Bacon, when he came to heaven gate, was opposed, touching an unjust decree which had been made in the Chancery. Sir Nicholas desired to see the order, whereupon the decree was drawn up; and finding it to begin *Veneris, &c.* 'Why,' saith he, 'I was then sitting in the Star Chamber; this concerns the Master of the Rolls; let him answer it.' Soon after came the Master of the Rolls, Cordal, who died indeed a small time after Sir Nicholas Bacon; and he was likewise stayed upon it; and looking into the order, he found, that, upon the reading of a certificate of Dr. Gibson, it was ordered that his report should be decreed. And so he put it upon Dr. Gibson, and there it stuck." (*Bacon's Apothegms.*)

EXTRACTS FROM THE WILL OF AN EARL OF PEMBROKE.

Imprimis—For my soul, I confess I have heard very much of souls, but what they are, or whom they are, or what they are for, God knows, I know not; they tell me now of another world, where I never was, nor do I know one foot of the way thither. While the King stood, I was of his religion, made my son wear a cassock, and thought

to make him a Bishop; then came the Scots and made me a Presbyterian; and since Cromwell entered I have been an Independent. These, I believe, are the kingdom's three estates, and if any of these can have a soul, I may claim one; therefore, if my executors do find I have a soul, I give it to him who gave it to me. *Item.*—I give my body, for I cannot keep it, to be buried. Do not lay me in the church porch, for I was a Lord, and would not be buried where Colonel Pride was born. *Item.*—My will is, that I have no monument, for then I must have epitaphs and verses, and all my life long I have had too much of them. *Item.*—I give all my deer to the Earl of Salisbury, who I know will preserve them, because he denied the King a buck out of one of his own parks. *Item.*—I give nothing to Lord Say; which legacy I give him, because I know he will bestow it on the poor. *Item.*—To Tom May I give five shillings; I intended him more: but whoever has seen his History of the Parliament, thinks five shillings too much. *Item.*—I give Lieutenant-General Cromwell one word of mine, because hitherto he never kept his own. *Item.*—I give up the ghost.—*Concordat cum originali.*

LORD AVONMORE AND CURRAN.

"Lord Avonmore was one of the brightest ornaments of his country; to a masculine under-

standing, immense capacity, great and profound learning, he added a powerful wit and an overwhelming eloquence. His wit, though not so frequently exercised as Mr. Curran's, was yet a gem of the first water. A great susceptibility in his temperament subjected him to great gusts of impatience. Mr. Curran, with intent to cure his friend of this imperfection, and also to relieve himself from its effects, coming one day rather late to dinner, to shelter himself from the storm which he found gathering about him, observed, on entering the room, that he was delayed by a melancholy circumstance which took place in Clarendon market, through which he was passing. It was a butcher and a child; the butcher had a bloody knife—Lord Avonmore could not be patient; his extreme feeling took the alarm, 'What,' he exclaimed, 'my God! has the villain murdered the child? Oh! good heavens!' His feelings were so wound up that he, by this dreadful anticipation, had neither eye nor ear. He at length perceived a laugh in the room, and, looking at Mr. Curran, 'What! did you not say that the butcher had stabbed the infant to the heart?' 'No, my Lord, I said he plunged the bloody blade into the throat of a pig.'" (*O'Regan's Memoirs of Curran, p.* 89.)

SIR THOMAS PLUMER.

The forcible and familiar manner in which Sir Thomas always delivered his judgments, will be long remembered. In the celebrated case of *Cholmondely* v. *Clinton*, he is said to have thus expressed himself: "Testator says to himself, "I'll have the right heir of Samuel Rolle; and be *he* male, or be *he* female, he's the man for my money!"

LORD ELLENBOROUGH.

When Lord Ellenborough was Attorney General, he was listening with some impatience to the judgment of a learned judge, afterwards his colleague, who said, in ——— *v.* ———, "*I ruled* that, &c." "*You rule!*" said the Attorney General, in a tone of suppressed indignation, loud enough to be heard, however, by many of his brethren of the bar, "You *rule!* you were never fit to rule any thing but a copy-book!"

ON THE LEGAL CHARACTER.

The exclusive devotion which the study of the law exacts is certainly unfavourable to the general character of its professors. The quaint maxim, that "Lady Common Law must lie alone," is, from the commencement of his career, invariably inculcated upon the mind of the student. "The Law," says Sir Matthew Hale, "will admit of no

rival, nothing to go even with it." "As to the profession of the law," observes Roger North, "I must say of it in general, that it requires the whole man, and must be his North star, by which he is to direct his time, from the beginning of his undertaking it to the end of his life." Nearly the same expressions are made use of by Sir William Jones, in a letter to the Bishop of St. Asaph, "My ultimate knowledge of the nature of my profession obliges me to assure you that it requires the *whole man,* and admits of no concurrent pursuits; that, consequently, I must either give it up or it will engross me so much that I shall not for some years be able to enjoy the society of my friends or the sweets of liberty." Under a similar impression, the able author of the Pursuits of Literature strongly advises the students of our universities not to mingle the study of the law with their academical pursuits, since they will necessarily be compelled, upon entering the profession, to abandon all other occupations.

Unfortunately these opinions are but too well founded. The science of the law, as it at present exists, demands the painful industry of a long and laborious life. No one who has not attempted to master it can conceive the insurmountable difficulties which continually present themselves to the most diligent mind, making new claims upon

its patience, its resolution, and its energy. It is impossible that even the most assiduous person should arrive at that point of knowledge which would justify him in laying aside his books and resting satisfied in the conviction that he is master of the science. This impression naturally deters the lawyer from the prosecution of other pursuits. He is aware that, in turning the powers of his mind to foreign employments, his professional attainments will but too probably suffer. At all events he is certain that they will suffer in the estimation of others. Perhaps no instance can be pointed out in which a devotion to occupations not within the pale of the profession has not been more or less injurious to the reputation of the person indulging in it. It is true that men of high genius may have surmounted the obstacles which this circumstance has thrown in their way, but they have nevertheless experienced its effects. Even the splendid intellect of Bacon, employed upon subjects alien to his profession, subjected him to censure, as a lawyer. "The several books," says Osborn, in his advice to his son, "incomparable Bacon was known to read, besides those relating to the law, were objected to him as an argument of his insufficiency to manage the place of Solicitor-General, and may lie as a rub in all their ways who, out of a vain glory to manifest a general knowledge, neglect this caution."

Under a conviction, not only that the law does in fact require the devotion of the whole mind, but also that the opinion of the world demands it, it is not surprising that few lawyers venture to trespass beyond the bounds of their profession. To some, indeed, whose resolution, or whose necessities are not so imperious, this enthralment of the intellects is so irksome that even on the threshold of their studies they abandon them. Others, with superior energy, resolutely gird themselves for the task, and cast aside, without remorse, all other hopes and occupations. Others, again, will attempt to compromise their sterner duties and their pleasures, and endeavour to mingle the sweets of literature with the austerities of the law; an experiment, however, which is seldom attended with success. It is no uncommon spectacle to see men of high talents, disgusted or dispirited, diverging from the study of the law to other pursuits. Of such men we have two well-known examples in West, the friend of Gray, and in the poet Cowper. The two following extracts so forcibly display the feelings of the writers that it is impossible not to insert them.

"I have lived," says West, "in the Temple till I was sick of it; I have just left it, and find myself as much a lawyer as I was when I was in it. It is certain, at least, that I may study the law here as well as I could there, my being in

chambers did not signify to me a pinch of snuff. They tell me my father was a lawyer, and, as you know, eminent in the profession, and such a circumstance must be of advantage to me; my uncle, too, makes some figure in Westminster Hall, and there's another advantage. Then my grandfather's name would get me many friends. Is it not strange that a young fellow that might enter the world with so many advantages, will not know his own interest? &c. What shall I say in answer to all this? For money I neither doat upon it nor despise it; it is necessary stuff. For ambition, I am not deficient in that; but it is not to sit upon a bench. In short, is it not a disagreeable thing to force one's inclination, especially when one is young? Not to mention that one ought to have the strength of an Hercules to go through our common law, which I am afraid I have not. Well, but then, say they, if one profession do not suit you, you may chuse another more to your inclination. Now, I protest, I do not know my own inclination, and I believe, if that was to be my direction, I should never fix at all. Oh the folly of young men that will never know their own interest! They never grow wise till they are ruined, and then nobody pities them nor helps them."

"Had I employed my time," says Cowper in a

letter to his friend, Rose,* "as wisely as you, in a situation very similar to yours, I had never been a poet, perhaps; but I might by this time have acquired a character of more importance in society, and a situation in which my friends would have been better pleased to see me. But three years misspent in an attorney's office were almost of course followed by several more, equally misspent in the Temple, and the consequence has been, as the Italian epitaph says, *Sto qui*. The only use I can make of myself now, at least the best, is to serve *in terrorem* to others when occasion may happen to offer, that they may escape, (so far as my admonitions can have any weight with them,) my folly and my fate. When you feel yourself tempted to relax a little of the strictness of your present discipline, and to indulge in amusement incompatible with your future interest, think on your friend at Weston." (*Hayley's Cowper, vol.* iii. *p.* 294.)

Of the second class, or the students who have devoted themselves, body and soul, to the law, our courts can claim an eminent example in a gentleman who is said to have made it his boast that

* We cannot mention the name of Mr. Rose without begging such of our readers as are not already acquainted with it to turn to the brief but very interesting memoir of him, which is to be found at the conclusion of the third volume of Hayley's Cowper.

after he left school he never opened any other than a law book. A portion of the same spirit dictated Blackstone's Farewell to his Muse, and has prevailed upon many a reluctant student, like Prospero, to plunge the magic books which have been the delight of his youthful years, deeper than plummet ever sounded. Of those who endeavour to unite the study of the law with less severe employments, the number is by no means inconsiderable, but it is seldom from this body of men that the successful practisers in our courts are taken. Let the reader reflect for a moment on the state of the bench and the bar at the present time, and he will, probably, acknowledge the justice of this opinion.

This exclusive dedication of the mind to professional pursuits which marks the true lawyer, must necessarily tend to develope a peculiar intellectual character. Unfortunately that character is by no means of the highest order. The law is, undoubtedly, a science of detail, and the lawyer, therefore, gradually loses those powers of generalization which are so essentially necessary to the philosopher and the statesman. The penetrating judgment of Swift, who was intimate with many of the most celebrated lawyers of his day, induced him to declare, that lawyers, "of all others, seem least to understand the nature of government in general." So Burke, in speaking of

Mr. Thomas Grenville, observes, "Mr. Grenville was bred to the law, which is, in my opinion, one of the first and noblest of human sciences; a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but it is not apt, except in persons very happily born, to open and to liberalise the mind exactly in the same proportion." (*Burke's Speech on American Taxation.*) In fact, it cannot be expected, that a man, whose mind is devoted to the study of a system, depending, as our English Jurisprudence does, so greatly upon arbitrary precedent, should be able, in the consideration of other subjects, immediately to unfetter his reason. To judge of the effect of legal studies upon the mind, we may refer to the writings and arguments of some of our elder lawyers, where we shall find abundant proofs of the absurd mode of reasoning into which they often fell. The same style of argument is too frequently carried, by the lawyers of the present day, into the House of Commons, where we find them attempting to dispose of important questions upon technical niceties. It has been remarked by the author of the Pursuits of Literature, in a line, certainly not very eminently poetical, that

"In state affairs all Barristers are vain."

But it unfortunately happens, that they are some-

times worse than vain,—that they obstruct the progress of intelligence and improvement. Superstitiously attached, by long habits, to all existing institutions, they deem it a sort of sacrilege to alter any thing which has even the prescription of error to support it. Accustomed as they are in their own courts to uphold incongruities and absurdities for the purpose of rendering the landmarks of the law stable and certain,* they do not hesitate for a moment to declare in favour of all existing institutions. Hence it happens, that the attempts to amend the system of our laws have often been opposed by the lawyers themselves, not, it may be granted, from any interested motives, but from a conviction of the impolicy and danger of disturbing the ancient edifice, which they hold in so much veneration. "By long use and custom," says Sir Mathew Hale, (*See Hargrave's Law Tracts, p.* 264,) "men, especially that are aged, and have been long educated in the profession and practice of the law, contract a kind of superstitious veneration of it beyond what is just and reasonable." Sir Edward Coke, who was certainly deeply imbued with this superstis-

* The trite case of Dower of a Trust will occur to every legal reader. The law says that Dower shall be favoured, and as a proof of this favouritism, excludes the wife from her Dower of a Trust, while the curtesy of the husband is admitted.

tious veneration, has expressed himself like a true lawyer, on the subject; "Commonly, a new invention doth offend against many rules and reasons, (as here it appeareth,) of the common law; and the ancient judges and sages of the law have ever (as it appeareth in our books) suppressed innovations and novelties in the beginning, as soon as they have offered to creep up, *lest the quiet of the common law might be disturbed,* and so have Acts of Parliament done, the like whereof, by the authorities quoted in the margents, you may, instead of many others upon this occasion, take a little taste. But our excellent author in his three books hath said nothing but *ex veterum sapientium ore et more.*" (*Co. Litt.* 379, *b.*) It is certainly much to be feared, that a reformation in our laws will never proceed from its professors, and yet it is impossible that it can ever be effectually accomplished without their assistance.

It must be acknowledged, that there are many eminent instances of men whose minds have been uncontaminated by the prejudices of their profession, and who have displayed that felicitous union of practical ability with speculative talents, which constitutes statesman-like genius. That genius was possessed, in no inconsiderable degree, by Sir Samuel Romilly, whose unwearied efforts to reform our criminal code will be for ever honourable to his name and memory. Mansfield, and Thurlow, and

Dunning, must also be considered as having burst through the trammels of professional habits. The display of their splendid talents in the House of Commons did much to uphold the reputation of the bar.

It is remarked by Sir William Jones, that "the only road to the highest stations in this country, is that of the law;" a circumstance which powerfully affects the legal character. The life of an eminent lawyer in modern times is one continued temptation,—one constant struggle between his principles and his love of power. The government always find it worth while to secure the services of such a man, and possess abundant means of alluring him to their standard. The sophistries with which the lawyer has been used to mislead a jury, he now employs to deceive his own conscience, and the result is in general what his purchasers desire. How many of the legal opponents of government perceive the error of their ways on a vacancy occurring in the Chief Justiceship of Chester! and what a singular diversity we may sometimes observe between the political opinions of Mr. A. B., a rising man at the bar, and Sir A. B., the Solicitor General! In addition to this, the law itself, in its maxims and its spirit, inclines very much to the prerogative, and its professors very generally follow the same inclination. There are some periods, indeed, at

which the bar have been singularly slavish, and when it has required all the weight of individual honour and integrity to rescue the profession from absolute disgrace. The exalted virtues of Sir Matthew Hale, and the honesty of Sergeant Maynard, can scarcely redeem the character of a body of men who could eulogise the unconstitutional measures of Charles II.*, It is true, that the bar, and even the bench, have made some very creditable stands against the encroachment of power. Sir Edward Coke opposed the despotic notions of James I. more energetically than any other man of his time, and by the part which he acted in promoting the Petition of Right, has

* "The Society of Barristers and Students of the Middle Temple, thanked his Majesty for the attention he had shewn to the trade of the kingdom, concerning which and its balance, (and upon this last article they laid particular stress) they seemed to think themselves peculiarly called upon to deliver an opinion; but whatever might be their knowledge in matters of trade, it was, at least, equal to that which these addressers showed in the laws and constitution of their country, since they boldly asserted the king's right to levy the duties, and declared that it had never been disputed but by persons engaged in what they were pleased to call rebellion against his royal father. The address concluded with a sort of prayer that all his majesty's subjects might be as good lawyers as themselves, and disposed to acknowledge the royal prerogative in all its extent." *(Fox's Historical Work, p. 92.)*

earned the gratitude of posterity; but even his patriotism is outweighed by the wonderful political profligacy of his contemporary, Lord Bacon. Later times can boast of a Somers and a Camden; but upon the whole, it must, we fear, be granted, that the lawyers are not the most honest politicians.

It is, perhaps, amongst the worst attributes of the law, that it is calculated to give a suppleness of conscience by no means favourable to integrity of character. That a man who is occupied half his time in "making the worse appear the better reason," should, in matters affecting his own feelings and interests, make use of a portion of that sophistry which he has found so successful when applied to deceive others, cannot be a matter of surprise. Nor is it, indeed, by any means so difficult a task as it may at first appear, to mislead the moral sense. In the instances, which we every day observe, of men who have forsaken their earlier principles, it would be unfair to suppose that they are continuing to act in direct opposition to the dictates of their consciences. Their offence is glossed over in their own eyes by a false but specious reasoning, and, in many cases, they probably believe themselves acting with equal honesty, as when at a former period of their lives they opposed the very measures which they now advocate. This power of self-deception gives

double force to the temptations to which a man of eminence at the bar is exposed, and, unless resisted, is destructive to all high and honourable principle.

In what degree the law, when compared with other professions, is calculated to promote the individual happiness of its votaries, seems to be a question incapable of a very satisfactory solution. To men of ardent temperament and powerful intellect, the law, connected as it is with political hopes and views, certainly opens the noblest prospect. On the other hand, there are many circumstances peculiar to it, which detract very considerably from the share of happiness which its professors enjoy. It has been remarked, that "there is, perhaps, no profession whose followers more completely experience the truth of the maxim, that *Hope delayed maketh the heart sick*." How bitter this sickness of the heart is, they who have experienced it alone can tell: and how few there are in the profession who have been exempted from the feeling! That the noon of his manhood should be devoted to a struggle against disappointment and dependence, cannot fail to raise some sentiments of regret in the heart of every one, whatever may be the firmness of his will, and the confidence of his hopes. The lapse of years which has raised the friends of his youth to independence and fortune, to a set-

tled station in life, and to the enjoyment of the domestic affections, too often finds him the same lonely and unrequited labourer as at the commencement of his painful career. Nor has the mode of life which the lawyer is compelled to adopt, any lenitive to offer for his cares. Separated, in all probability, from the society of his family, he has no other will than his own to observe, no other pleasures than his own to pursue; a situation ill adapted to develope those social affections in which so much of the true happiness of life consists. He is far removed from the happy hearth of his youthful home, and from those domestic sympathies, which in former years were so dear to him. In *his* silent and solitary chamber no eye sparkles, no smile beams as he enters. In sickness he has no one to soothe him; in despondency no one to support him. In his joy and his sorrow no one has part. Under such circumstances, it is not surprising that the vivid feelings of his earlier and happier years should become blunted and deadened. Perhaps he still retains sufficient sensibility to observe, with bitter reflections, the gradual change of heart and character which is taking place within him. In vain he touches the springs of those delightful affections of which his bosom was formerly the seat. The beautiful machinery is broken, and his cold heart remains unmoved. To a person who has once

possessed strong feelings, this growing apathy of the affections is more painful than words can express.

The picture which the domestic life of a lawyer too often exhibits, has been painted by a powerful pencil.

"I had seen other great lawyers and judges, some of them crabbed old bachelors, others uneasily yoked to vulgar helpmates, having married in early life a woman, whom they had dragged up as they rose, but who were always pulling them down;—had seen some of these learned men sink into mere epicures, and become dead to intellectual enjoyment,—others, with higher minds, and originally fine talents, I had seen in premature old age, with understandings contracted and palsied by partial or overstrained exertion, worn out mind and body, and only late, very late in life, attaining wealth and honour, when they were incapable of enjoying them. This had struck me as a deplorable and discouraging spectacle,—a sad termination of a life of labour!" (*Patronage, vol.* ii. *p.* 283.)

The foregoing observations must be regarded as presenting the most unfavourable view of the legal character. The reverse of the picture may be studied in the lives of such men as Hale, and Somers, and Romilly.

POETICAL WILLS.

The following Poetical Wills are said to have been proved in the Prerogative Court of Canterbury.

The fifth day of May,
Being airy and gay,
And to hyp not inclined,
But of vigorous mind,
And my body in health,
I'll dispose of my wealth,
And all I'm to leave,
On this side the grave,
To some one or other,
And, I think to my brother
Because I foresaw,
That my brethren in law,
If I did not take care,
Would come in for a share,
Which I no wise intended,
'Till their manners are mended,
And of that, God knows, there's no sign.
I do therefore enjoin,
And do strictly command,
Of which witness my hand,
That nought I have got,
Be brought into hotch-pot;
But I give and devise,
As much as in me lies,

To the son of my mother,
My own dear brother,
To have and to hold,
All my silver and gold,
As the affectionate pledges,
Of his brother,

JOHN HEDGES.

What I'm going to bequeath,
When this frail part submits to death,—
But still I hope the spark divine
With its congenial stars shall shine,—
My good Executors, fulfill,
And pray ye fairly, my Last Will,
With first and second Codicil.
And first I give to dear Lord Hinton,
At Twyford School now, not at Winton,
One hundred guineas, and a ring,
Or some such memorandum thing:
And truly much I should have blundered,
Had I not given another hundred
To dear Earl Paulett's second son,
Who dearly loves a little fun:
Unto my nephew, Stephen Langdon,
Of whom none says he e'er has wrong done,
The Civil Law he loves to lash,
I give one hundred pounds in cash:
One hundred pounds to my niece Tudor,
(With leering eyes one Clarke did view her,)

And to her children just amongst 'em,
A hundred more; and not to wrong 'em,
In equal shares I freely give it,
Not doubting but they will receive it.
To Betty Mudford and Mary Lee,
If they with Mrs. Mudford be,
Because they round the year did dwell
In Davies' Street, and served full well;—
The first ten pounds, the other twenty;
And, girls, I hope that will content ye.
In seventeen hundred and sixty-nine,
This with my hand I write and sign,
The sixteenth day of fair October,
In merry mood, but sound and sober,
Past my three score and fifteenth year,
With spirits gay, and conscience clear;
Joyous and frolicksome, though old,
And like this day serene, tho' cold;
To foes well wishing, and to friends most kind;
In perfect charity with all mankind.

For what remains I must desire,
To use the words of Matthew Prior;
Let this, my will, be well obeyed,
And farewell all, I'm not afraid;
For what avails a struggling sigh,
When soon or later all must die?

M. DARLEY.

THE DUMB DAY.

"There was an incident, that happened not long after his Lordship came into the place of Chief in that Court, which, though in itself, and in the end of it, ridiculous, yet, being an affront to the Court, and in particular to the Lord Chief Justice, and by the whole bar of Sergeants, all in a lump together, ought to be related, as I shall do, really as it was acted by them. It hath been the usage of the King's Bench, at the side-bar below in the Hall, and of the Common Pleas, in the Chamber within the Treasury, to hear Attorneys and young Counsel, that came to move them about matters of form and practice. His Lordship had a younger brother, (Hon. Roger North,) who was of the profession of the law. He was newly called to the bar, and had little to do in the King's Bench; but the Attorneys of the Common Pleas often retained him to move for them, in the Treasury, such matters as were proper there, and what they might have moved themselves. But, however agreeable this kind of practice was to a novitiate, it was not worthy the observation it had; for, once or twice a week was the utmost calculate of these motions. But the Sergeants thought that method was, or might become, prejudicial to them, who had a monopoly of the bar, and would have no water to go by their mill, and supposed it was high time to put a stop to such beginnings, for fear it might grow worse. But the doubt was, how they should signify their re-

sentment, so as to be effectually remedial. At length they agreed, for one day, to make no motions at all; and opportunity would fail for shewing the reason how the Court came to have no business. When the Court (on this Dumb Day, as it was called,) was sat, the Chief Justice gave the usual signal to the eldest Sergeant to move. He bowed, and had nothing to move; so the next and the next, from end to end of the bar. The Chief seeing this, said, 'Brothers, I think we must rise; there is no business.' Then an Attorney steps forward, and called to a Sergeant to make his motion; and after that turned to the Court, and said, that he had given the Sergeant his fee and instructions over night, to move for him, and desired he might do it. But profound silence still. The Chief looked about and asked, 'What was the matter?' An Attorney that stood by, very modestly said, 'That he feared the Sergeants took it ill that motions were made in the Treasury.' Then the Chief Justice scouted the whole matter, and, "Brothers,' said he, 'I think a very great affront is offered to us, which we ought, for the dignity of the Court, to resent. But that we may do nothing too suddenly, but take consideration at full leisure, and maturely, let us now rise, and to-morrow morning give order as becomes us. And do you, Attorneys, come all here to-morrow, and care shall be taken for your

dispatch, and, rather than fail, we will hear you or your clients, or the barristers at law, or any person that thinks fit to appear in business, that the law may have its course.' And so the Court rose. This was like thunder to the Sergeants, and they fell to quarreling one with the other, about being the cause of this great evil they had brought upon themselves; for none of them imagined it would have had such a turn as this was, that shaked, what was the paladium of the coif, the sole practice there. In the afternoon they attended the Chief and the other Judges of the Court, and in great humility owned their fault, and begged pardon, and that no further notice might be taken of it; and they would be careful not to give the like offence for the future. The Chief told them, that the offence was in public, and in the face of the Court, and they must make their recognitions there next morning, and in such a manner as the greatness of their offence demanded; and then they should hear what the Court would say to them. Accordingly they did; and the Chief first, and then, the rest in order, gave them a formal chiding, with acrimony enough; all which, with dejected countenances, they were bound to hear. When this discipline was over, the Chief pointed to one to move; which he did, (as they said,) more like one crying than speaking: and so ended the comedy, as it was acted in Westminster Hall, called the Dumb Day." (*Life of Lord Guilford, vol.* i. *p.* 195.)

A NEW JURY.

The following lines are said to have been handed in court to a beautiful young lady, who was attending a trial at the Warwick Assizes.

Whilst petty offences and felonies smart,
Is there no jurisdiction for stealing one's heart?
You, fair one, will smile and cry "Laws, I defy you!"
Assured that no peers can be summoned to try you;
But think not that paltry defence will secure ye,
For the Muses and Graces will just make a Jury.

JUDICIAL ANTICIPATION.

A pleasant *jeu d' esprit* under the above title appeared in the year 1812, in imitation of a celebrated political satire, which the reader will probably recollect. At this period there were certain seats vacant on the benches of our courts of justice, and a number of candidates are supposed to appear before the privy council, and to urge their own merits. Amongst them are Mr. Justice Gibbs, Mr. Park, the Sol. Gen. Sir W. Garrow, Mr. Topping, Mr. Jekyll, and Mr. Brougham. Lord Ellenborough delivers the decision of the privy council. The satire was believed to be the production of the authors of the Rejected Addresses. Beneath will be found the speech put in the mouth of Mr. Park.

"My Lords and Gentlemen of his most Gracious Majesty's most Honourable Privy Council.

"My learned friend, the Solicitor General, having, for a moment, left your most honourable bar, (Oh! I see he is now returned; but as I am now on my legs, I have no doubt my learned friend will allow me to precede him,) with all that humility which becomes a candidate for the high and important situation to which I now aspire, I offer myself at your most honourable bar. [(Looking round,) It is quite impossible.—There is such a noise—the commotion of sitting down.] My lords and gentlemen, I was entreating you to permit me to approach your most honourable bar, as a candidate for one of those elevated situations now at your disposal, for I believe none of us (at least I can answer for myself,) meant to oppose the very learned judge, who has just addressed you, as a candidate for a still higher situation, and I am perfectly aware of the small merit upon which I can rest my very feeble pretensions; nobody (I think) can be more fully sensible of it. At the same time, my lords and gentlemen, I do feel it to be a duty I owe to myself and family (as every man who has the happiness of being a father can sympathise with me, and your lordships and you, gentlemen, many of you at least, I know have families too, and most promising and (I hope) happy families, and cannot fail to sympathise with me.) [Really there is such a noise—I was going

to say something—] my lords and gentlemen, oh—I feel it to be a duty to my family to procure my promotion by all respectful means. I am now, my lords and gentlemen, in the annual receipt of a most prodigious professional income; but, upon my word, it is not for me to say how long my unaccountable popularity may last. I give you my word, I know not how I gained it, and I know not how long I may maintain it; but this I do say, that I hope I have never forgotten my courtesy to all for a public estimation, which I am conscious of not deserving. I really do feel that young men of talents (I will not mention names because I ought not, and therefore I do not,) are treading close at my heels, and I am anxious to compromise the uncertainty of my present large profits for the certainty of my future smaller ones, in a situation, however, attended with rank and honour, such as men of my humble talents have seldom gained before, and perhaps never will again. My learned friend, the Solicitor General, will, I know, go very much upon these splendid abilities, which we all know him to be in possession of, and will waive his law, (if I may so speak.) Now, my lords and gentlemen, I go pretty much upon my law, if your lordships and you, gentlemen, will allow a recollection of the names of cases to be called *law*; and here I would quote to your most Honourable Body a case from

the northern circuit, in which I was for the plaintiff, and my lord Ellenborough, when his lordship was at the bar, was (I recollect) for the defendant; the name of the case was Jackson and Holroyd, (the same name, my lord, as that of the gentleman at our bar—its very odd that it should be so, but it is—I see my learned friend, the Solicitor General, smiles at what I am going to say: it may be very ridiculous—but it's extremely distressing.) My lords and gentlemen, my learned friend has really quite put my case out of my head;—but I had looked into all the books on the subject, as it was my duty to do, and therefore I did it. However, my lords and gentlemen, having, I hope, made good my plea of set off, I mean my opposition of my law to my learned friend, the Solicitor General's talents, I think I have set myself straight with him, and that so far our pretensions are equal. Well—but then my learned friend turns round and says, 'Oh—but I have been Solicitor General!'—Now really I do say, my lords and gentlemen, this is not quite fair—what has a man of his talents gained by having been for, really, my lords, only six months, Solicitor General? Surely the conduct of one or two prosecutions for the crown, and the praying judgment against five or six duellists and smugglers—I don't mean to say they were not to blame—they have been convicted, and I am bound to say pro-

perly convicted—it is not open to me to impeach the verdicts—and if it was, I hope I have no disposition to do so; besides, duelling and smuggling are very improper. But surely the exercise of such an office for a few months cannot have added so largely to his stock of ideas—and besides, for half that time it was the long vacation, and he was down at Ramsgate, enjoying himself in his pleasure-boat, (laughing immoderately.) Your lordships are aware that he has really a very pretty place at Ramsgate.—I am sure I don't mean to say any thing against him—and upon my word it would be the very worst height of ingratitude in me to do so—for I don't know whether your lordships are aware that he was so kind as to give me an invitation one summer—and very pleasant it was, (laughing most vehemently,) and plenty of prawns we had. Well, but to be sure, that has nothing to do with what I was going to say.—Oh—it was simply this, that my learned friend's short Solicitor-Generalship ought not to go for anything: I beg, though, it mayn't be understood that I mean to undervalue that high and important office, or to cast any imputation (for I do assure your lordships and you, gentlemen, I have no instructions, I mean, no intention of doing so,) upon his manner of filling it. I am sure no man in this world looked up to that situation more than I did, or would have felt more honoured by being invested with it;—not

but that I was glad to see it so advantageously and profitably filled, as by my learned friend. My lords and Gentlemen, I don't know that I can add any thing more:—our claims are before your most honourable bar; the Solicitor General's and mine have been gone into pretty much at length; and, which ever way they are decided, I'm sure I shall be perfectly satisfied with that decision, and bow to it most implicitly, as it is my duty so to do."

EPIGRAM.

A case occurred a few years ago, in the Court of Chancery, in which the four gentlemen, whose names will be found below, were concerned. The following lines were said to describe their respective merits briefly but correctly.

Mr. Leach
Made a speech,
Impressive, clear, and strong;
Mr. Hart,
On the other part,
Was tedious, dull, and long.

Mr. Parker
Made that darker,
Which was dark enough without;
Mr. Bell
Spoke so well,
That the Chancellor said, "I doubt."

VAGABONDS IN THE REIGN OF ELIZABETH.

The following singular letter from Fleetwood, the recorder of London, to Lord Burleigh, may serve to throw some light on the history of the poor laws which originated in this reign. *(See Ellis's Original Letters, vol.* ii. *p.* 283.*)*

" My singuler good Lord, uppon Thursday at even, her majestie in her cooche, nere Islyngton, taking of the aier, her Highnes was environed with a nomber of rooges. One Mr. Stone, a foteman, came in all hast to my Lord Maior, and after to me, and told us of the same. I dyd the same night send warrants owt into the seyd quarters, and in to Westminster and the Duchie: and in the mornyng I went a brood my selff, and I tooke that daye lxxiiij roogs, whereof some were blynd, and yet great usurers, and very riche: and the same daye, towards night, I sent for Mr. Harrys and Mr. Smithe, and the governors of Bridwell, and tooke all the names of the roogs; and sent theym frome the Sessions Hall unto Bridwell where they remayned that night. Upon Twelff daye in the forenoone, the Master of the Rolls, my selff, and others receyved a charge before my lords of the counsell as touching roogs, and masterles men, and to have a pryvie searche. The same daye at after dyner (for I dyned at the Rolls) I mett the governors of Bridwell, and so

that after nowne we examined all the seyd roogs, and gave theym substantiall payment. And the strongest we bestowed in the mylne and the lighters. The rest wee desmyssed with a promise of a dooble paye if we mett with theym agayne. Upon Sounday, being crastins of the Twelfth daye, I dyned with the Deane of Westminster, where I conferred with him touching Westminster and the Duchie, and then I tooke order for Southwarke, Lambeth, and Newyngton, from whence I receyved a shooll of xl roogs, men and women, and above. I bestowed them in Bridwell. I dyd the same afternowne peruse Pooles, where I tooke about xx^{ti} cloked roogs that there use to kepe standing. I placed theym also in Bridwell. The next mornyng, being Mounday, the M^{r} of the Roolls and the rest, tooke order, with the constable, for a pryvie searche ageynst Thursdaye, at night, and to have the offenders brought to the Sessions Hall upon Frydaye, in the mornyng, where wee, the Justices, should mete. And, agaynst the same tyme, my Lo. Maior and I dyd the lyke in London and Sowthwarke. The same afternowne the masters of Bridwell and I met, and after every man beyng examined, eche one receyved his payment according to his deserts; at whiche tyme the strongest were put to worke, and the other dismissed into their countries. The same daye the M^{r} of the Savoye was with us, and sayd he was

sworne to lodge '*claudicantes, egrotantes, et peregrinantes;*' and the next mornyng I sent the constables of the Duchie to the hospitall, and they browght unto me, at Bridwell, vi tall fellows, that were draymen unto bruers, that were neither '*claudicantes, egrotantes,* nor *peregrinantes.*' The constables, if they might have theyre owen wills, wold have browght as many moo. The master dyd wryte a very curtese letter unto us to produce theym: and although he wrote charitably unto us, yet were they all sowndly payed, and sent home to thare masters. All Tewsday, Weddensdaye, and Thursdaye, there cam in nambers of roogs; they were rewarded all according to theire deserts. Upon Frydaye mornyng, at the justice hall, there were browght in above a C lewd people, taken in the pryvie searche. The M^r^ of Bridwell receyved theym, and immediately gave theym punishment. This Satterdaye, after causes of consciens herd by my Lord Maior and me, I dined, and went to Polls and in other places as well within the liberties as elsewhere, and I founde not one rooge stirryng. Emongst all these thyngs I dyd note, that we had not of London, Westminster, nor Southwarke, nor yet Midd. nor Surr. above twelve, and those we have taken order for. The resedew for the most were of Wales, Salop, Cestr. Somerset, Barks, Oxford, and Essex; and that fewe or none of thaym had been abowt Lon-

don above iij or iiij monethe. I dyd note also that we mett not agayne wi^th^ any in all our searches that had receyved punishment. The chieff nurserie of all these evell people is the Savoye, and the brick kylnes nere Islyngton. As for the brick kylnes, we will take such order that they shall be reformed. And I trust, by your good Lordship's help, the Savoye shall be amended; for suerlie, as by experiens I fynd it, the same place, as it is used, is not converted to a good use or purpose. And this shall suffice for roogs.

"Upon Weddensdaye last, a Frenche merchaunt, in a bagge sealed, delivered to a carrier's wiff, of Norwich, xl^li^ to be carried to Norwich. She secretlie conveyed the money to a house a good way off from the inne; and, within half a quarter of an houre, the Frenche merchaunt cam agayne to se his money packed up. But the woman denyed that ever she receyved any one penny, with such horrible protestacions as I never herd of before. Mr. Secretarie Walsingham wrote me his letters for the ayde of the Frenche man; and, after great search made, the money was founde and restored. She not knowing of the same, I examined her in my studie privatlie, but by no means she wold not confesse the same, but did bequeath herselff to the devell, both bodie and sowle, if she had the money or ever saw it. And this was her craft, that she then had not the money,

and in dead she sayd the trowth, for it was either at her frynds where she left it, or els delyvered. And then, I perceyving her fewke, I asked her whether the Frenche merchaunt dyd not bryng her a bagge sealed, full of metall that was weightie, were it either platts, coyne, coynters, or such lyke: then, quoth she, I will aunswer no further. And then I used my Lo. Maior's advise, and bestowed her in Bridwell, where the masters and I saw her punished; and being well whipped, she sayd that the devell stood at her elbowe in my studie, and willed her to denye it. But so soon as she was upon the crosse to be punished he gave her over. And thus my singular good Lo. I end this tragicall part of this wicket woman.

"This mornyng the Deputie of Holbourne and two of the Wardmot Enquest browght me this examination. I send for the partie. He was browght before my Lo. Maior and me. And we have commanded hym to wards expecting your good Lo. advise as touching his offens.

"Thus most humbly I send unto your good Lo. this last weeks dairye ceasing at this tyme to troble your honour any further. At Bacon howse this 14th of Ja. 1581.

"Your Lordships
most bounden
"W. FLETEWOOD."

SIR EDWARD COKE AND DR. COWELL.

Dr. Cowell, a celebrated civilian in the reign of James I., was induced, at the solicitation of Archbishop Bancroft, to publish a law dictionary, under the title of "The Interpreter." Like a true civilian, Cowell indulged in some severe reflections upon the common law; and, amongst other offences of the kind, ventured to censure Littleton's Tenures, and repeated Hottoman's remarks on that book. Sir Edward Coke was, of course, highly indignant at an attack upon a work which he had declared to be "the most perfect and absolute book which was ever written in any science;" an opinion which he undertook to maintain "against all opposites whatever." But this was not the first offence which the civilian had given him. Cowell had been employed by Bancroft to draw up the reasons against the too frequent grants of prohibitions by the courts of common law, which were delivered to James I., and were denominated *Articuli Cleri.* The bitter disputes which these complaints occasioned between the common lawyers and the churchmen may be seen by a reference to the cases of prohibitions in the 12th Report. Sir Edward, zealous for the honour of his master, Littleton, and for that system which he had declared to be "the perfection of reason," endeavoured, by every means, to mortify

and annoy his adversary. It was customary at that time for the civilians to practise in Westminster Hall as well as at Doctors' Commons, and whenever Dr. Cowell used to appear in the common law courts, Sir Edward was accustomed to address him by the name of *Dr. Cow-heel.* Not content, however, with the vengeance which his tongue and his pen inflicted, Coke resolved to make a formal complaint against him to the king. Knowing his Majesty's weak side, he assured him that "Dr. Cowell had disputed too nicely upon the mysteries of this our monarchy; yea, in some points very derogatory to the supreme power of the crown," and had asserted "that the king's prerogative was, in some cases, limited." It must be acknowledged that the latter charge did not become the mouth of Coke, who had resolved, with several of his brothers, "That the king hath no prerogative but that which the law of the land allows him." (*See* 12 *Rep.* 76.) Nor have the obnoxious passages in the Interpreter a very anti-prerogative character. They are as follows. "1. That the king is *solutus a legibus,* and not bound by his coronation oath. 2. That it is not *ex necessitate* that the king should call a parliament to make laws, but that he may do that by his absolute power; for *voluntas regis* with him is *vox populi.* 3. That it is a favour to admit the consent of his subjects in giving subsidies. 4. That he draws

his arguments from the Imperial Laws of the Roman Emperors, which are of no force in England."

The king, who imagined it a sort of blasphemy in a subject to meddle with the prerogative, issued his proclamation against the buying and selling, or reading the Interpreter, and took this occasion to indulge in some remarks upon the royal authority, which far surpass in absurdity any thing contained in Dr. Cowell's obnoxious volume. The commencement of the proclamation ran as follows. "This latter age and time of the world, wherein we are fallen, is so much given to verbal profession, as well of religion as of all commendable moral virtues, but wanting the actions and deeds agreeable to so specious a profession, as it hath bred such an insatiable curiosity in many men's spirits, and such an itching in the tongues and minds of most men, as nothing is left unsearched to the bottom, both in talking and writing. For from the very highest mysteries in the Godhead, and the most inscrutable councils in the Trinity, to the very lowest pit of hell and the confused actions of the devils there, there is nothing now unsearched into by the curiosity of men's brains. Then not being contented with the knowledge of so much of the will of God as it hath pleased him to reveal, but they will needs sit with him in his most private closet, and be-

come privy of his most inscrutable counsels: and therefore it is no wonder that men in these our days do not spare to wade in all the deepest mysteries that belong to the persons and state of kings and princes, *that are Gods upon earth*, since we see (as we have already said) that they spare not God himself."

It appears that this proclamation was drawn from the king by the proceedings which parliament was about to take against Dr. Cowell, but which were abandoned on the interference of his majesty. It is even said that at one period James had declared at the council table his approbation of the doctor's book.

LORD CHANCELLOR NORTHINGTON.

"A more singular character than the late Lord Chancellor Northington has not, perhaps, been unfolded to modern observation. He possessed considerable abilities, was an upright judge, and gave satisfaction in the high office he enjoyed: in private life he was the very reverse of every thing which would seem to produce dignity in a public station. In his youth he was a professed debauchee, and the sentiments and language of that character were retained by him to the latest moment of his existence. On his return home from the administration of justice, he would not hesitate to swear at his servants, and be indecent

with his company.—Indeed, the state coach was not always considered sacred to chaste and decent speech, and the uneasiness of that rumbling machine, when his lordship's feet have been tender from the gout, has called forth very strong exclamations in the presence of the mace and seals. Some of his friends have been so free as to declare they have actually seen an oath on his lips when he presided on the woolsack, though it was never known to escape further. One occasion, however, was marked with language too expressive to pass unnoticed.

"The speaker, Onslow, who attends with the most scrupulous regard, both in public and private, to the dignity of his character, was complaining, on his arrival later than usual at the House of Commons, on some day of important business, that he had been stopped in Parliament Street, owing to the obstinacy of a carman, and was told that the Lord Chancellor had experienced a considerable delay from the same cause. 'Well,' (said the speaker) did not his lordship show him the mace, and strike him dumb with terror?' 'No,' (it was replied) 'he did not; but he swore, by God, that if he had been in his private coach, he would have got out and beat the damned rascal to a jelly.'" (*Strictures on the Lives and Characters of Eminent Lawyers*, &c. 1790, *p.* 17.)

THE LAST DAYS OF JUDGE JEFFERIES.

"The Lord Jefferies' fate, as well as that of his master, King James, came on apace:—for the Prince of Orange being landed, advanced towards London without opposition, and the King, having taken the seal from the Chancellor, left him in the lurch, and withdrew privately, on the 10th of December, in the dead of the night, down the Thames, in order to go for France. The Great Seal was afterwards found by a fisherman in the Thames, and the Chancellor, now without protection, having rendered himself obnoxious to most people, and being perfectly hated by the nation, on Monday, between three and four in the morning, withdrew, and having in disguise got down safe to Wapping, put himself on board a collier, which was pretended to be bound for Newcastle, but, indeed, was designed for Hamburgh: but some persons having notice thereof, by means of the mate, they went to a justice for a warrant to apprehend him; but he thought fit to put them off; whereupon they applied themselves forthwith to the Lords of the Council, who granted them a warrant, and they went immediately to search the ship: but he, on Tuesday night, not thinking himself safe on board the collier in which he was to pass, lay in another ship hard by, so that those who came that day to search for him,

missed of him on board; but had information given them, that he was hard by, at a little peddling ale-house, where accordingly they found him, being the sign of the Red-cow, in Anchor and Hope Alley, near King Edward's Stairs, from whence they immediately hurried him in a coach, guarded with several blunderbusses, to the Lord Mayor's, where the crowd was so great, and the rabble so numerous, all crying out together, 'vengeance, justice, justice!' that the Lord Mayor was forced to come out into his balcony, and, with his hat in his hand, desired the people to go away, and keep the peace; and did promise them, that he had already sent to the Lords of the Council about the matter, and that they should have justice done them; and that, in the mean time, their prisoner should be safely guarded: whereupon the people withdrew, and soon after my Lord, under a strong guard, was sent to the Lords of the Council, who committed him to the Tower, where he continued to the 18th of April, 1689, when he was freed by death from his earthly confinement. He had for some years before been subject to terrible fits of the stone, which, in all probability, now accelerated his death, though others gave out, that he abandoned himself to drinking, thinking to support his sinking spirits by it, and that it helped forward to put a period to his life. He was buried privately in the Tower the Sunday

night following, by an order his relations got from King William." (*Lives of the Chancellors, vol.* i. *p.* 185.)

NELSON'S LUTWYCH.

In the year 1718, an abridgment and translation of the Cases in Lutwych was published by a person of the name of Nelson, whose labours are noticed by Mr. Viner, in the Preface to the 18th volume of his Abridgment, in the following commendatory manner: "For besides these, there are many other grievances, among which may be reckoned such books as *Nelson's Lutwych*,—a book which deserved public censure at least, as being a reproach and dishonour to the profession, and rather adapted to Billingsgate than Westminster Hall. What notion will any foreigner entertain of our law to see a volume thereof stuffed with such ungentlemanlike language, and to meet with such ridiculous and scoundrel titles as 'Law Quibbles,' &c. to see skeleton treatises on some particular head very imperfectly done, with the help of a number of idle precedents, swelled up into a thick volume."

In fact, Mr. Nelson performed his task in a very flippant style, treating the learned Lutwych with great irreverence. Thus, we find such remarks as the following: "But now the Sergeant is come to the digressive part of his Report,

where he observes that which neither the Court nor Counsel could see, &c. This objection was made by him on purpose to shew his readiness in answering it."—So again, "This is only a hear-say report, which the Sergeant had *ex relatione* of his brother Girdler, which, for ought I know, may be as good authority as Justice Warburton's old manuscript; only I must observe, that if I tell a long and impertinent story *what* another man told me, it will not be allowed as evidence to a common jury, but it may serve to prolong the time, and so may this to enlarge the book." Another specimen of Mr. Nelson's style of annotation will be sufficient. "The Sergeant tells us, This case is reported by Sir J. Savil, and that the record was now printed to correct a mistake in that report, where 'tis said, there were two disturbances alleged, &c. but certainly this could not be any reason for publishing this record, for after one hundred and fifteen years, when this case happened, it cannot be material to inform the world that there was but one disturbance set forth in that declaration; there must be some other reason for it, and probably it was to acquaint the reader, (to use the common expression,) how long the Lutwyches have followed the law; for I found John Lutwych was attorney on the record for the defendants, and so he was in 9 *Jac.* (*Winch's, Ent.*

fo. 9.") After this, the reader need not be warned against buying Nelson's Lutwych.

A LONDON JURY; HANG HALF, AND SAVE HALF.

"Some affirm this of an Essex, others of a Middlesex Jury; and my charity believes it *equally true*, that is, *equally untrue*, of all *three*. What gave first occasion to this libelling proverb I know not. This I know, reports of this nature, like round bodies down precipices, once moved move themselves; and a mouse may stir what a man cannot stay in this kind. The best is, though none can hinder a slanderer from speaking, they may hinder them from speaking the truth.

"This proverb would fain suggest to credulous people, as if *Londoners*, frequently impannelled on juries, and loaded with multiplicity of matters, aim more at *dispatch* than *justice*; and, to make quick riddance, (though *no haste to hang true men*,) acquit half, and condemn half. Thus they divide themselves *in æquilibrio* between *justice* and *mercy*, though it were meet the latter should have the more advantage, and the beam break on the pitiful side. Others extend this proverb also to their arbitrations betwixt party and party; as if not minding the merits of the cause, they cleave the thing controverted into equal moieties between plaintiff and defendant.

"The falseness of these suggestions will ap-

pear to such who, by perusing history, do discover the *London Jurors* most conscientious in proceeding *secundum allegata et probata*, always inclining to the merciful side in saving life, when they can find any cause or colour for the same; and amongst many thousands take two most memorable instances.

"The first, Sir Nicholas Throgmorton, who, on the 17th of April, 1554, was (in the reign of Queen Mary,) arraigned for High Treason in Guildhall, before Sir Thomas White, Lord Maior; the Earls of Shrewsbury and Derby, Sir Thomas Bromley, Lord Chief Justice, &c. Mr. Edward Griffin, the Attorney General, pressed the prisoner very sorely for his correspondence with the Carews in the West, and his being privy to the rising of Sir Thomas Wyat. Sir Nicholas pleaded many hours for himself, no lesse stoutely than wisely, yet with due submission to the Court, till at last his *Jury* passed upon him; whose names, *ad perpetuam rei memoriam*, are here inserted:

1. Wheston,	5. Beswick,	9. Painter,
2. Lucar,	6. Barsearfeld,	10. Banks,
3. Yoong,	7. Hightleie,	11. Calthrop,
4. Martin,	8. Low,	12. Cater.

"These acquitted the prisoner; and, though much menaced by the Court, stood stoutely to their verdict, for which they were all imprisoned, five of them fined, and paid 2601. a piece, the rest

lower sums; and, after their discharge from durance, commanded to attend the Council-table at an hour's warning.

"The other is of a person who was lately arraigned in Guildhall, and whom I list not to name, partly because he is easily guessed, partly because he was of so turbulent a spirit, that his name would set all my book at dissension. He, being charged with what concerned his life, was, by an uncorrupted Jury, though heavily pressed to the contrary, clearly acquitted; and one passage (omitted in his printed tryal,) I must here insert.

"Speaking his farewell to the *Jury*, now ready to depart the bar, he requested them to remember a statute in the reign of King Henry the Seventh, as making much in his behalf. 'Sirrah,' said one of the Judges on the bench to this prisoner, 'I know that statute better than you do.' To whom he calmly replyed, 'I believe you, Sir; but I desire that these Gentlemen of the Jury should understand it but as well as I do.' And so it seems they did, for his life was saved thereby." (*Fuller's Worthies,—London.*)

Mr. Barrington, in his Observations on the Ancient Statutes, (*p.* 458,) cites several authorities to prove the corruption of the London Juries in former times.

LEGAL RECOLLECTIONS OF LONDON.—NO. II.

[*Continued from vol.* I. *p.* 200.]

On quitting the Temple, the legal pilgrim proceeds up Chancery Lane, a very ancient thoroughfare. It was built in the time of Henry III. and was then called New Lane, but subsequently acquired its present appellation, probably from its vicinity to the Chancery offices. Nearly at the bottom of Chancery Lane stands Sergeant's Inn, formerly called "Faryngdon's Inn." It appears to have been converted into a residence for the Sergeants about the year 1414, being at several times demised to them by the dean and chapter of Ely, whose property it was. (*Herbert's Inns of Court, p.* 352.) At what precise period the judges fixed their chambers in this inn does not clearly appear. In Coke's Reports, if we remember right, the conferences of the judges are sometimes stated to have been held at Sergeant's Inn, Chancery Lane, and sometimes at Sergeant's Inn, Fleet Street. At present those chambers are a disgrace to the profession. Their darkness, meanness, and inconvenience, totally unfit them for the use to which they are applied. The chambers of the Masters in Chancery resemble palaces in comparison with them. At the gateway of the inn stand our old friends, "the Common Baylers,"

(*see ante, v.* i. *p.* 68,) so well described in Hudibras.—

"Vouchers, Forgers, Common Bail,
And Affidavit Men."

A little above Sergeant's Inn we arrive at the Rolls. This house was originally founded by Henry III. as an asylum for converted Jews, and was styled Domus Conversorum. (*See* 1 *Madox's Exchequer*, 259.) About the year 1377, it was first applied to its present use, and William Burstal, clerk, is said to have been the first *Custos Rotulorum*, as he was at that time called. The Court of the Master of the Rolls is small, but convenient; indeed, his whole establishment is compact and well contrived. His house, his court, and his chapel, all adjoin one another. The chapel was built by Inigo Jones. Amongst the many eminent men who have presided over this Court there is none who claims a more particular notice than Sir Harbottle Grimstone, whose character has been drawn by Burnet. (*Own Times*, *vol.* i. *p.* 535.) Burnet was chaplain to Sir Harbottle, and the circumstance which led to his dismissal from that office was so singular that we shall insert the account of it in his own words.

"I continued at the Rolls, avoiding, very cautiously, every thing which related to the public; for I abhorred the making the pulpit a stage for

the venting of passion, or for the serving of interests. There was a parish in London vacant where the election lay in the inhabitants, and it was probable that it would have fallen on me; though London was in so divided a state that every thing was managed by the strength of parties. Old Sir Harbottle Grimstone lived still to the great indignation of the Court. When the fifth of November, being Gunpowder Treason, came, in which we had always sermons at the chapel of the Rolls, I begged the Master of the Rolls to excuse me then from preaching; for that day led one to preach against popery, and it was indecent not to do it. He said he would end his life as he had led it all along, in an open detestation of popery. So, since I saw this could not be avoided, though I had not meddled with any point of popery for above a year together, I resolved, since I did it so seldom, to do it to purpose. I chose for my text these words, *Save me from the lion's mouth; thou hast heard me from the horns of the unicorn.* I made no reflections in my thoughts on the lion and the unicorn, as being the two supporters of the king's scutcheon, (for I ever hated all points of that sort as being a profanation of scriptures,) but I shewed how well popery might be compared to the lion's mouth, then open to devour us; and I compared our former deliverance from the extremities of

danger to the being on the horn of a rhinoceros. And this leading me to the subject of the day, I mentioned that wish of king James I. against any of his posterity that should endeavour to bring that religion in amongst us. This was immediately carried to the Court. But it only raised more anger against me, for nothing could be made of it. They talked most of the choice of the text as levelled against the king's coat of arms. That had never been once in my thoughts. The Lord Keeper North diverted the king from doing any thing on account of my sermon. And so the matter slept till the end of the term, and then North writ to the Master of the Rolls, that the king considered the chapel of the Rolls as one of his own chapels, and since he looked on me as a person disaffected to his government, and had, for that reason, dismissed me from his own service, he therefore required him not to suffer me to serve any longer in that chapel."*

In the chapel are some curious monuments, which have been described by Pennant. (*Hist. of London, p.* 231.)

* A similar anecdote is somewhere related of the elder Sheridan, the friend of Dean Swift. Preaching on the anniversary, we believe, of the Brunswick accession, he inadvertently chose for his text—*sufficient for the day is the evil thereof*—which was immediately construed into a most disrespectful allusion.

On the other side of Chancery Lane, a little higher than the Rolls, we arrive at the great gateway of Lincoln's Inn. Before the time of Edward I. the site of this inn was occupied by a Monastery of Black Friars, but in that reign Henry Lacy, the great Earl of Lincoln, being a person, as it is stated, "well affected to the study of the laws, first brought the professors of that honourable and necessary study to settle in this place." The present gateway, fronting Chancery Lane, was finished, as we are informed by Dugdale, (*Orig. Jur. p.* 232,) in the reign of Henry VIII. The whole history of the buildings, from the Chapel to the Woodhouse, may be found in the same writer. The hall is not equal to those of the Temple, nor does the chapel, which was built by Inigo Jones, merit much attention. In short, Lincoln's Inn is by no means rich in legal associations.

On leaving Lincoln's Inn and passing into Lincoln's Inn Fields we recognize several celebrated legal residences. The large mansion, a portion of which is now the Verulam Club-house, was formerly occupied by lord Kenyon; the capacious messuage at the corner of Great Queen Street was built for the duke of Newcastle, (the minister.) It was proposed, at one period, to purchase this house with the public money, and to make it the town residence of the chancellor for the time be-

ing; the idea was, however, abandoned. But there are far nobler associations than these connected with this scene. It was the place where Lord Russell perished. How simple and affecting is the account of his execution given by Burnet! "He went into his coach with great cheerfulness. Dr. Tillotson and Dr. Burnet accompanied him. As they were going he looked about him and knew several persons; some he saw staring on him who knew him, and did not put off their hats. He said there was great joy in some, but that did not touch him so much as the tears he observed in the eyes of others, for that, he said, made him tender. He sung within himself as he went along; and Dr. Burnet asking him what he was singing, he said it was the 119th psalm,—but that he should sing better very soon. As the carriage turned into Little Queen Street, he said, 'I have often turned to the other hand with great comfort, but now I turn to this with greater.' As he said this, he looked towards his own house, and Dr. Tillotson saw a tear drop from his eye. Just as they were entering Lincoln's Inn Fields, he said, 'This has been to me a place of sinning, and God now makes it the place of my punishment.' He wondered to see so great a crowd assembled. He had before observed that it rained, and said to his companions, 'This rain may do you hurt that are bareheaded.' He

then knelt down, and prayed three or four minutes by himself. When that was done, he took off his coat and waistcoat; he had brought a nightcap in his pocket, fearing his servant might not get up to him. He undressed himself, and took off his cravat, without the least change of countenance. Just as he was going down to the block, some one called out to make a lane, that the Duke of Albemarle might see; upon which he looked full that way. Dr. Burnet had advised him not to turn about his head, when it was once on the block, and not to give a signal to the executioner. These directions he punctually attended to. 'When he had lain down,' says Dr. Burnet, 'I once looked at him, and saw no change in his looks; though in the moment in which I looked, the executioner happened to be laying his axe to his neck, to direct him to take his aim; I thought it touched him, but am sure he seemed not to mind it.' The executioner at two strokes cut off his head."

[*To be continued.*]

JENNINGS'S CASE.—*Circumstantial Evidence.*

A gentleman, travelling to Hull, was stopped late in the evening, about seven miles short of it, by a single highwayman, with a mask on, who robbed him of a purse containing twenty guineas. The highwayman rode off, a different road, full speed, and the gentleman pursued his journey. It, how-

ever, growing late, and he being already much affrighted and agitated at what had passed, he rode only two miles further, and stopped at the Bell Inn, kept by Mr. James Brunell. He went into the kitchen to give directions for his supper, where he related to several persons present his having been robbed; to which he added this peculiar circumstance, that when he travelled, he always gave his gold a certain mark; that every guinea in the purse he was robbed of, was so particularly marked, and that most probably the robber, by that means, would be detected. Supper being ready, he retired. He had not long finished his supper, before Mr. Brunell came into the parlour. After the usual enquiries of landlords, of hoping the supper and every thing is to his liking, &c. &c. "Sir," says he, "I understand that you have been robbed, not far from hence, this evening."—"I have, Sir."—"And that your money was all marked?"—"It was."—"A circumstance has arisen which leads me to think that I can point out the robber."—"Indeed!"—"Pray, Sir, what time in the evening was it?"—"It was just setting to be dark."—"The time confirms my suspicions!" Mr. Brunell then informed the gentleman that he had a waiter, one John Jennings, who had of late been so very full of money at times, and so very extravagant, that he had had many words with him about it, and had

determined to part with him on account of his conduct being so very suspicious; that long before dark that day he sent him out to change a guinea for him, and that he had only come back since he (the gentleman) was in the house, saying that he could not get change; and that Jennings being in liquor, he had sent him to bed, resolving to discharge him in the morning. That at the time he returned him the guinea, he (Mr. Brunell) did not think it was the same which he had given him to get silver for, having perceived a mark upon this which he was very clear was not upon the other; but that, nevertheless, he should have thought no more of the matter, as Jennings had so frequently gold of his own in his pocket, had he not afterwards heard, (for he was not present when the gentleman was in his kitchen relating it) the particulars of the robbery, and that the guineas which the highwayman had taken were all marked: that, however, a few minutes previously to his having heard this, he had, unluckily, paid away the guinea which Jennings returned him, to a man who lived some distance off, and was gone; but the circumstance of it struck him so very strongly, that he could not, as an honest man, refrain from giving this information.

Mr. Brunell was thanked for his attention and public spirit. There was the strongest room for suspecting of Jennings; and if, on searching him,

any of the marked guineas should be found, as the gentleman could swear to them, there would then remain no doubt. It was now agreed to go softly up to his room; Jennings was fast asleep; his pockets were searched, and from one was drawn forth a purse, containing exactly nineteen guineas. Suspicion now became demonstration, for the gentleman declared them to be identically those which he had been robbed of. Assistance was called, Jennings was awaked, dragged out of bed, and charged with the robbery. He denied it firmly, but circumstances were too strong to gain him belief. He was secured that night, and the next day carried before a neighbouring justice of the peace. The gentleman and Mr. Brunell deposed the facts on oath; and Jennings having no proofs, nothing but mere assertions of innocence, to oppose them, which could not be credited, he was committed to take his trial at the next assizes.

So strong were the circumstances known to be against him, that several of his friends advised him to plead guilty on his trial, and to throw himself on the mercy of the court. This advice he rejected, and when arraigned, pleaded not guilty. The prosecutor swore to his being robbed; but that, it being nearly dark, the highwayman in a mask, and himself greatly terrified, he could not swear to the prisoner's person, though he thought him of much the same stature as the

man who robbed him. To the purse and guineas, which were produced in court, he swore—to the purse, positively—and, as to the marked guineas, to the best of his belief, and that they were found in the prisoner's pocket.

The prisoner's master, Mr. Brunell, deposed to the fact, as to the sending of the prisoner to change a guinea, and of his having brought him back a marked one in the room of one he had given him unmarked. He also gave evidence as to the finding of the purse, and the nineteen guineas in the prisoner's pocket. And, what consummated the proof, the man to whom Mr. Brunell paid the guinea, produced the same, and gave testimony to the having taken it that night in payment of the prisoner's master. Mr. Brunell gave evidence of his having received of the prisoner that guinea which he afterwards paid to this last witness. And the prosecutor, comparing it with the other nineteen found in the pocket of the prisoner, swore to its being, to the best of his belief, one of the twenty of which he was robbed by the highwayman.

The judge, on summing up the evidence, remarked to the jury, on all the concurring circumstances against the prisoner; and the jury, on this strong circumstantial evidence, without going out of court, brought in the prisoner guilty. Jennings was executed some little time after at Hull, re-

peatedly declaring his innocence to the very moment he was turned off. This happened in the year 1742.

Within a twelvemonth after, lo! Brunell, Jennings's master, was himself taken up for a robbery done on a guest in his own house; and, the fact being proved on his trial, he was convicted, and ordered for execution. The approach of death brought on repentance, and repentance confession. Brunell not only acknowledged the committing of many highway robberies, for some years past, but the very one for which poor Jennings suffered!

The account he gave was, that he arrived at home by a nearer way and swifter riding, some time before the gentleman got in who had been robbed. That he found a man at home waiting, to whom he owed a little bill, and that not having quite enough loose money in his pocket, he took out of the purse one guinea, from the twenty he had just got possession of, to make up the sum; which he paid, and the man went his way. Presently came in the robbed gentleman, who, whilst Brunell was gone into the stables, and not knowing of his arrival, told his tale as before related, in the kitchen. The gentleman had scarce left the kitchen before Brunell entered it; and being there informed, amongst other circumstances, of the marked guineas, he was thunderstruck! Having paid one of them away, and not daring to ap-

ply for it again, as the affair of the robbery and marked guineas would soon become publicly known,—detection, disgrace, and ruin, appeared inevitable. Turning in his mind every way to escape, the thought of accusing and sacrificing poor Jennings at last struck him.—The rest the reader knows. (*Theory of Presumptive Proof.*)

DID SHAKSPEARE EVER STUDY THE LAW?

This question has been diligently discussed by several of the Commentators upon our great Dramatist. Malone has declared his belief, "that, on leaving school, Shakspeare was placed in the office of some country attorney, or the seneschal of some manor court." (*Reed's Shakspeare, vol.* i. *p.* 60.) This conjecture appears to rest entirely on the occurrence of various legal phrases in the poet's works, which has drawn from Mr. Malone the observation, "that Shakspeare's knowledge of legal terms is not such merely as might be acquired by the casual observations of even his all-comprehending mind: it has," continues Mr. Malone, "the appearance of *technical* skill, and he is so fond of displaying it on all occasions, that I suspect he was early initiated in, at least, the forms of law, and was employed, while he yet remained at Stratford, in the office of some country attorney, who was at the same time a petty conveyancer."—Mr. Malone's theory is supported by

Mr. White, in his "Specimen of a Commentary," and by Dr. Drake, in his "Shakspeare and his Times;" but is opposed by Mr. Chalmers, in his "Apology," where he asserts, that the poet might have derived his technical knowledge of the law from a very few books.—We give the passages cited by Mr. Malone in support of his opinion, from which the learned reader will form his own conclusions.

"—— For what in me was *purchased*,
Falls upon thee in a much fairer sort."
(*K. Hen.* IV. *P.* II.)

"Purchase is here used in its strict legal sense, in contradistinction to an acquisition by descent.

"Unless the devil have him in *fee-simple, with fine and recovery.*" (*Merry W. of Win.*)

"He is 'rested *on the case.*" (*Comedy of Er.*)

"—— With *Bills* on their necks,
Be it known unto all men by these presents."
(*As you Like it.*)

"—— who writes himself Armigero,
In any *bill, warrant, quittance, or obligation.*"
(*Merry Wives of Win.*)

"Go with me to a notary, seal me there
Your *single bond.*" (*Mer. of Venice.*)

"Say, for non-payment that the debt should double." (*Venus and Adonis.*)

"On a conditional bond's becoming forfeited for non-payment of money borrowed, the whole penalty, which is usually the double of the principal sum lent by the obligee, was formerly recoverable at law. To this our poet here alludes.

"But the defendant doth that plea deny;
To 'cide his title, is impannelled
A quest of thoughts." (*Sonnet* 46.)

"In Much ado about Nothing, Dogberry charges the watch to keep their fellows' counsel and their own. This Shakspeare transferred from the oath of a Grand Juryman.

"And let my officers of such a nature
Make an *extent* upon his house and lands."
(*As you Like it.*)

"He was taken *with the manner.*"
(*Love's Labour Lost.*)

"*Enfeoff'd* himself to popularity."
(*K. Hen.* IV. *P.* I.)

"He will seal the fee-simple of his salvation, and cut the entail from all remainders, and a perpetual succession for it perpetually."
(*All's Well that Ends Well.*)

"Why, let her *accept before excepted.*"
(*Twelfth Night.*)

" —— Which is four terms, or two actions; and he shall laugh without *intervallums*."
(*K. Hen.* IV. *P.* II.)

" ——— Keep leets and *law-days*."
(*K. Richard* II.)

" *Pray in aid* for kindness." (*Ant. and Cleo.*)

" No writer but one who had been conversant with the technical language of leases and other conveyances, would have used determination as synonymous to end. Shakspeare frequently uses the word in that sense. See *vol.* xii. (*Reed's Shakspeare,*) *p.* 202. *n.* 2; *vol.* xiii. *p.* 127. *n.* 4; and (*Mr. Malone's Edit.*) *vol.* x. *p.* 202. *n.* 8. " from and after the *determination* of such a term;" is the regular language of conveyancers.

" Humbly complaining to your Highness."
(*K. Richard* III.)

" Humbly complaining to your Lordship, your orator," &c. are the first words in every Bill in Chancery.

" A kiss in fee-farm! In witness whereof these parties interchangeably have set their hands and seals." (*Troilus and Cressida.*)

" Art thou a *feodary* for this act?" (*Cymbeline.*)

" See the note on that passage, *vol.* xviii. *pp.* 507, 508. *n.* 3. *Reed's Edit.*

"Are those precepts served?" says Shallow to Davy, in K. Henry IV.

"Precept in this sense is a word only known in the office of a Justice of Peace.

"Tell me what state, what dignity, what honour,
Canst thou *demise* to any child of mine?"
(*K. Richard* III.)

"—— hath demised, granted, and to farm let," is the constant language of leases. What poet but Shakspeare has used the word *demised* in this sense?

"Perhaps it may be said," adds Malone, "that our author in the same manner, may be proved to have been equally conversant with the terms of divinity or physic. Whenever as large a number of instances of his ecclesiastical or medicinal knowledge shall be produced, what has now been stated will certainly not be entitled to any weight." (*Malone, Reed's Shakspeare, vol.* ii. *p.* 276. *n.* 9.)

SINGULAR ENTRIES.

In the older Books of Entries we occasionally find some amusing precedents. The following form of a Declaration is from Rastal's Entries, 2 b.

Action sur le case vers. Barber
pur raser le barbe
inartificialiter.

"R. S. Nuper de N. Barber attachiatus fuit ad

respondendum H. B. de placito, quod cum idem R. ad barbam ipsius H. bene et artificialiter cum novacula munda et salubri radere apud N. assumpsisset, predictus R. barbam ipsius H. cum quadam novacula immundi et insalubri tam negligenter et inartificialiter rasit, quod facies ipsius H. morbosa et scabiosa devenit, ad damnum ipsius H. 40s. ut dicitur. Et unde idem H., &c."

But we find a still more singular entry in Brownlow Redivivus, (p. 505,) with the marginal abstract of which alone we shall treat the reader.

"Count per la *Coachmaker's Widow*, vers. *le Frenchhome*. Eo quod defendens simul cum, &c. in querentem insultum fecit, et ipsam intoxicavit, et ad lectum ei ignotum adduxit, et illam super lectum istum deposuit, et in isto lecto cum querenti contra voluntatem suam impudenter recubuit, et se intrusit."

A DIGNIFIED GRAND JURY.

Sir John Dodderidge, one of the Justices of the King's Bench, in the reign of James I. having reproved the Sheriff of Huntingdon for impannelling men not qualified to sit on the Grand Jury, the Sheriff at the next assizes provided the following dignified list, containing the actual names of so many individuals in his county.

"A true and remarkable List of the Jury impannelled at Huntingdon Assizes, on the Nor-

folk Circuit, before Judge Dodderidge, 1619; 17 Jac. I.

Maximilian, KING of Fozland,
Henry, PRINCE of Godmanchester,
George, DUKE of Somersham,
William, DUKE of Weston,
William, MARQUIS of Stukeley,
Edward, EARL of Hartford,
Robert, LORD of Warsley,
Richard, BARON of Bythorpe,
Robert, BARON of Winwick,
Edmund, KNIGHT of Saint Neot's,
Peter, ESQUIRE of Everton,
George, GENTLEMAN of Spaldock,
Robert, YEOMAN of Bowham,
Stephen, POPE of Weston,
Humphrey, CARDINAL of Kimbolton,
William, BISHOP of Bugden,
John, ARCHDEACON of Paxton,
John, ABBOT of Stukeley,
Richard, FRIAR of Ellington,
Henry, MONK of Stukeley,
Edward, PRIEST of Graffham,
Richard, DEACON of Catsworth."

Harlei. Miscel. iii. 476.
(*Fuller's Worthies.—Devonshire*, 275.)

A SPECIAL PLEADER.

"The greatest and most laborious naturalists,

in their description of animal creation, are obliged to leave numerous subjects unnamed, and imperfectly described, that can only be classed under the general title of 'Non-descripts.' Of this indefinite class is the Special Pleader, whose existence cannot be naturally accounted for, as Heaven could design these orders of beings for no possible purpose of convenience or utility. We are told, indeed, that the wisdom of the Deity has created nothing in vain: the crocodile and the tiger, it is true, may exist as admonitory cautions against treachery and cruelty:—the Special Pleader's existence may be intended by Divine Wisdom for similar purposes, with this additional advantage, that nothing is better calculated strongly to inculcate the Christian virtue of Patience in both agent and patient.

"A Special Pleader appears to be of the spider kind;—they alike spin their web for the destruction of weak and unwary prey; one murders the little innocent fly, that flutters in the sunshine, the other strangles justice in his nets of form; both are equally pernicious and poisonous. Tully, that terrestrial god of literature, seems to have known something of these sort of men, and he thus describes them:—'Leguleius quidam cautus et acutus, præco actionum, cantor formularum, auceps syllabarum.'

"This description answers to nothing in or out

of nature, but a Special Pleader." (*Sketches of Eminent Lawyers*, 1790, *p.* 115.)

A JUSTICE OF THE PEACE.

The following lines from the Third Canto of Hudibras, are supposed to be intended as a Satire upon Prideaux, a mercenary and cruel magistrate:

" An old dull sot, who told the clock
For many years at Bridewell dock,
At Westminster, and Hicks's Hall,
And Hiccius Doctius play'd in all;
Where in all governments and times,
H' had been both friend and foe to crimes,
And used to equal ways of gaining,
By hind'ring justice, or maintaining:
To many a whore gave privilege,
And whipt for want of quarteridge,
Cart-loads of bawds to prison sent,
For being behind a fortnight's rent,
And many a trusty pimp and croney
To Puddle-dock for want of money:
Engaged the constable to seize
All those that would not break the peace;
Nor give him back his own foul words,
Though sometimes Commoners or Lords,
And kept 'em prisoners of course,
For being sober at ill hours,
That in the morning he might free,
Or bind them over for his fee.

Made monsters fine, and puppet plays,
For leave to practise in their ways,
Farm'd out all cheats, and went a share
With th' headborough and scavenger;
And made the dirt i' th' streets compound,
For taking up the public ground;
The kennel, and the king's highway,
For being unmolested, pay;
Let out the stocks and whipping-post,
And cage, to those that gave him most;
Imposed a tax on bakers' ears,
And for false weights, on chandelers;
Made victuallers and vintners fine
For arbitrary ale and wine;
But was a kind and constant friend
To all that regularly offend:
As residentiary bawds,
And brokers that receive stolen goods,
That cheat in lawful misteries,
And pay church duties and his fees:
But was implacable and awkward
To all that interlop'd and hawker'd."

The interview between the Knight and the Justice is admirably related; but is too long for insertion in this place.

Mr. Garrow, some years ago, examining a very young lady, who was a witness in a case of as-

sault, asked her, if the person who was assaulted did not give the defendant very ill language,—if he did not call him a damn'd Scotch Cobbler, and utter other words, so bad, that he, the learned counsel, had not impudence enough to repeat? She replied in the affirmative.—"Will you, Madam, be kind enough," said he, "to tell the Court what these words were?"—"Why, Sir," replied she, "if *you* have not impudence enough to speak them, how can you suppose that *I* have?"

A case was argued before the Court of Chancery, in which there was some dispute about the age of a woman, whom Mr. Graham, (now the Baron,) had stated to be five-and-forty, rather against the evidence. The Master of the Rolls, (Sir Pepper Arden,) disputing a little the position of Mr. Graham, the latter said,—"*I'll lay you a bottle*——— my Lord, I beg your pardon, I really forgot where I was."

END OF VOL. II.

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